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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

November 16, 1967 - 10:00 a.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
C. J. Hunt

P R O C E E D I N G S

THE PRESIDENT: The Sergeant at Arms will clear the aisles and close the doors.

The Convention will please come to order.

The invocation today will be offered by the Reverend Joseph Doty, who is Headmaster at Georgetown Preparatory School, Garrett Park, Montgomery County. Father Doty has a particular connection with some of the persons attached to this Convention, inasmuch as the son of Delegate Scanlan is a student at Georgetown, as is also the son of Mrs. Craine in the Information Office.

Father Doty.

FATHER DOTY: I would like to give as the invocation this morning a hymn of praise composed by St. Augustine. Let us pray:

Who is the Lord but the Lord, and Who is God but our God. You are the greatest and the best, the mightiest Almighty, most merciful and most just; utterly hidden and utterly present; most beautiful and most strong; abiding yet mysterious; suffering no change and changing all things; never new, never old, but making all things

1 new; ever in action, ever at rest; gathering all things
2 to Yourself and needing none; sustaining and fulfilling
3 and protecting; creating and nourishing and making perfect;
4 ever seeking, though lacking nothing.

5 You Who love without subjection to passion;
6 You are jealous but not with fear; You can know repentance
7 but not sorrow; can be angry, yet unperturbed by anger.
8 You can change the things You have made with Your mind,
9 but Your mind remains changeless. You find and receive back
10 what You never lost. You are never in need, but rejoice
11 over Your gains. You are not greedy, but demand interest
12 manifold.

13 Men pay You more than they have to in order to
14 win from You in return, yet who has anything which is not
15 already Yours? You owe nothing, yet pay as if You were in
16 debt to Your preachers. You forgive what is owed to You,
17 yet without losing thereby.

18 And with all this, what have I said, My God
19 and my Life and my Sacred Delight? What can anyone say
20 when he speaks of You?

21 Amen.

1 THE PRESIDENT: Roll call.

2 (Whereupon, the roll was called.)

3 THE PRESIDENT: Has every delegate answered
4 roll call? The Clerk will record the roll call.

5 There being a quorum present, the Convention
6 is in session.

7 I have several announcements to make. I hand
8 to the journal clerk a memorandum of absences excused
9 during the pay period November 1 to and including November
10 14, 1967. I will not have it read across the desk.
11 It is available for anyone to look at.

12 The Chair recognizes Delegate Powers.

13 DELEGATE POWERS: Mr. President, I move the
14 adoption of today's calendar.

15 THE CHAIRMAN: Is there a second?

16 (Whereupon, the motion was seconded.)

17 THE PRESIDENT: All in favor, signify by
18 saying Aye; contrary, No. The Ayes have it. It is so
19 ordered.

20 Are there any reports of other committees?

21 (There was no response.)

1 THE PRESIDENT: Any motions or resolutions?

2 (There was no response.)

3 THE PRESIDENT: If not, the Chair recognizes
4 Delegate Powers.

5 DELEGATE POWERS: Mr. Chairman, I move the
6 Convention dissolve itself into the Committee of the
7 Whole for the purposes of considering orders of the day.

8 THE PRESIDENT: Is the motion seconded?

9 (Whereupon, the motion was seconded.)

10 THE PRESIDENT: All in favor, signify by saying
11 Aye; contrary, No. The Ayes have it. It is so ordered.

12 (The mace was removed by the Sergeant at Arms.)

13 (Whereupon, at 10:07 a.m. the Convention re-
14 solved itself into the Committee of the Whole.)

15 THE CHAIRMAN: The Committee of the Whole will
16 please come to order.

17 We have under consideration Committee recommen-
18 dation No. JB-1, the Minority Report with respect to court
19 structure.

20 The Chair recognizes Delegate Johnson and
21 requests he come forward to the reading desk.

1 The Chair recognizes Delegate Beatrice Miller,
2 who had a question to put to Delegate Johnson.

3 DELEGATE B. MILLER: Mr. Chairman, I was going
4 to ask the Chairman of the Minority Report if the Minority
5 had ever considered specifically the words in the model
6 Constitution in relation to the first section on which he
7 has the minority report. In that, as I recall, the model
8 Constitution calls for such other courts as may be set up
9 by -- such other lower courts as may be set up by law, or
10 as shall not be inconsistent, or by rule, as not inconsistent
11 with law.

12 Has there been any consideration of the specific
13 wording of the model Constitution?

14 DELEGATE JOHNSON: Yes, we did consider the
15 wording of the model Constitution, by the National Municipal
16 League, and it is my understanding that -- and if my memory
17 serves me correct -- that wording did say something about
18 the establishment of other inferior courts as
19 provided by law.

20 We felt inasmuch as the district court would be
21 the lower tier court, and because of the possibility of

1 inferior courts putting us back in the magistrate court
2 system that we now have, and apparently what everyone is
3 trying to get away from, that that would not be correct,
4 to say the establishment of inferior courts.

5 I think that I should also point out that there
6 are no States, to our knowledge, that provide for a four-
7 tier unified court system, and if you have a four-tier
8 you are really starting from the bottom and working up.
9 Our amendment goes to the problem of what other special,
10 or additional courts may or may not be needed. I don't
11 know of any now, but inasmuch as we are writing this Consti-
12 tution for 50 or 100 years, the situation might develop;
13 so other inferior courts probably would not be applicable
14 with a four-tier court system that we would adopt.

15 THE CHAIRMAN: Are there any other questions
16 of the Minority spokesman with respect to sections 5.01
17 to 5.11?

18 Delegate Macdonald.

19 DELEGATE MACDONALD: Delegate Johnson, I
20 intend to introduce an amendment to section 5.08 and sec-
21 tion 5.10, on line 14 of page 3 and on line 41 of page

1 3, which would in effect provide for functional divisions
2 to be established as prescribed by rule or by law.

3 If that amendment were acted on favorably, would
4 you feel that your amendment to which you are addressing
5 yourself now would be unnecessary?

6 DELEGATE JOHNSON: Let me answer it in this way:

7 I am sympathetic, if not in favor, and I am
8 probably in favor with the amendment that you propose, but
9 it really doesn't answer the question of special courts,
10 such as the possibility of establishing a single tax court.

11 I don't know whether or not these particular
12 special courts will ever be needed, and I don't know
13 whether or not any other special courts will be needed.
14 We just felt that perhaps, in writing this Constitution,
15 we would want to allow for the flexibility.

16 Let me be perfectly frank in saying that, as
17 of this time, I believe that a unified judicial court
18 system, a four-tier court system, particularly with the
19 provision that the functional divisions will be determined
20 by rule or by law, will answer all the immediate problems
21 of Maryland. Yes, they will. I can't predict what will

1 happen 25 or 50 years from now, and we wanted to allow
2 that flexibility or that latitude, if in fact the legis-
3 lature in its wisdom at that time determined that some
4 other court may be necessary.

5 May I also answer the question by saying that
6 when you provide for functional divisions in the district
7 court or superior court you, of course, mean that each
8 and every court in each and every county or in each and
9 every district will have the same jurisdiction, so that other-
10 wise you will not have a unified judicial court system.

11 It is just a question whether or not you would
12 want to have all the courts handle such specialized matters
13 as tax or labor; if they wanted to assume the responsibility
14 within their functional divisions or assume the responsibility
15 within their particular setup or not.

16 I think it would work that way. I think it
17 would be all right, but to come right back to the problem,
18 can we anticipate future needs, I think that our amendments
19 will take care of that. But I can't be any more specific
20 than that. It is not necessary now. It may be necessary
21 in the future.

1 THE CHAIRMAN: Are there any other questions
2 of the minority spokesman?

3 Delegate Mitchell.

4 DELEGATE MITCHELL: Mr. President and Delegate
5 Johnson.

6 In your proposed amendment for nomination --

7 THE CHAIRMAN: That is not under discussion
8 at this point, Delegate Mitchell, 5.01, 5.11.

9 DELEGATE MITCHELL: I will hold that.

10 DELEGATE JOHNSON: I have in the minority
11 report specifically on 5.11, and I feel because there
12 are other amendmends pending from 5.01 through 5.10, that
13 perhaps we could take care of those amendments, and I would
14 have an opportunity ~~when~~ we reach 5.11 to give the minority
15 report on 5.11

16 THE CHAIRMAN: I think it would be better if
17 you would give the report now so that the delegates would
18 have in mind the position of the minority in considering
19 any other amendments.

20 DELEGATE JOHNSON: All right.

21 THE CHAIRMAN: You may proceed, now.

1 DELEGATE JOHNSON: Unless there are any other
2 questions on 5.01 --

3 THE CHAIRMAN: We will find that out later.
4 Go ahead with 5.11.

5 DELEGATE JOHNSON: Mr. Chairman and ladies
6 and gentlemen of the Committee:

7 May I call your attention to section 5.11 and
8 ask that you have before you or placed before you the
9 majority report with respect to 5.11, and the minority
10 report and the proposed amendment with respect to section
11 5.11.

12 I think it is important that we read this to-
13 gether to fully understand the impact that the majority
14 will have on our judicial system.

15 Let me first say that section 5.11 as proposed
16 by the majority states that there will be commissioners of
17 district court, and certainly there must be and should be
18 commissioners of the district court; but in addition to
19 providing that the qualifications of the commissioner will
20 be prescribed by rule -- and this word rule is very import-
21 ant at this point. It is the first time it is used in

1 significant manner in this article. I think that you
2 have to look at the word rule, together with section 5.31
3 of the majority report, inasmuch as section 5.31 provides
4 that although there will be concurrent rule making power,
5 that is, concurrent rule making power between the court
6 and the legislature in most matters, those matters that are
7 specifically set forth in Article V or in the Constitution
8 to be decided by rule will be exclusive rule making powers.

9 This is a departure from our present system, a
10 wide departure, I submit; and it is a departure from every
11 other system that we have had an opportunity to study
12 across the nation; so that section 5.11 as proposed
13 by the majority provides specifically for the judicial
14 establishment of the Office of Commissioner.

15 In other words, the majority proposes that the
16 judiciary who are first appointed, or whose office is set
17 up by the legislature, would then in turn appoint or create
18 the Office of Commissioner.

19 Now, in addition to creating the Office of
20 Commissioner, which we feel is certainly a legislative
21

1 function, section 5.11 in the majority report also
2 indicates and sets forth that the Commissioner and the Dis-
3 trict Court will serve at the pleasure of the judge of that
4 District Court.

5 So by creating and then having the decision
6 as to how long the particular commissioner shall hold
7 office, and when he shall leave office, that is left
8 strictly up to the court.

9 In our view this is clearly a legislative
10 function. First of all, the creation of the Office of
11 Commissioner -- and we think that it should be filled
12 in a manner prescribed by law -- we would hope that the
13 legislature would set up the profession of commissioenr,
14 and that there would be tenure to the position of commis-
15 sioner and that there would be a merit system with respect
16 to the office, so that, Mr. Chairman, I don't believe
17 that I have the specific amendment before me, because I had
18 anticipated that we were going to deal with 5.01 this
19 morning --

20 THE CHAIRMAN: I think you reproduce it on page
21 4 of your report, do you not?

1 DELEGATE JOHNSON: Yes. Unfortunately,
2 I don't have that before me. I have some notes. I wonder
3 if the Chair would excuse me long enough to get them.

4 THE CHAIRMAN: Certainly.

5 DELEGATE JOHNSON: Mr. Chairman, ladies and
6 gentlemen:

7 Hopefully, without repeating myself as contained
8 in the report of the minority, let me add that it is the
9 desire and wish of the minority to see some check on judi-
10 cial authority with respect to the administration of
11 courts, but frankly the main reason is to remove the courts
12 from what we consider to be a legislative function, and we
13 feel that this may be affected in part by having commis-
14 sioners selected according to the procedures established
15 as provided by law.

16 I think that we have to look at this in the
17 light of the possibility that the judicial budget, the
18 judicial package, may or may not be subject to legislative
19 review.

20 There is some question in my mind, and I think
21 in most minds, concerning to what extent the legislature

1 is going to be able to cut or scrutinize or examine the
2 judicial budget. So in our view if the the district
3 courts are given carte blanche with respect to the
4 selection of commissioners, there may in fact be no way that
5 irresponsible action, if any, may be curbed.

6 The Committee of the Whole should know that
7 a number of judges have expressed a desire not to see such
8 matters as the selection of Commissioners within their
9 control, and prefer that it be and remain a legislative
10 function.

11 In our view this will help keep the courts
12 insulated from partisanship, without hamstringing their
13 operations, because often we ask with respect to clerks and
14 with respect to commissioners whether or not, if these
15 matters were left to the legislature, whether or not this
16 would in any way impede the judicial administration; and
17 to each and every question along that line the judges
18 responded emphatically no, that it would not.

19 For that reason, and for the reasons contained
20 in the minority report, we would prefer to see the creation
21 of the Office of Commissioner, and the tenure of the

1 commissioner and the appointment of the commissioner to
2 be established by law, or by the legislature.

3 Let me hasten to add that by the same token
4 we sincerely believe and recommend to the Committee of
5 the Whole that the power of the commissioner be determined
6 by rule, as proposed in the majority report, so that if the
7 amendment of the minority carries, as we urge this
8 Committee to adopt, section 5.11 would read as follows:

9 "The General Assembly may provide for Com-
10 missioners of the District Court. The number, qualifi-
11 cations, appointment, compensation, and tenure of District
12 Court Commissioners shall be prescribed by law. Commis-
13 sioners may exercise power only with respect to warrants
14 of arrest, bail, collateral, and incarceration pending
15 hearing, and then only as prescribed by rule."

16 We think that this particular section is clearly
17 divisible; the appointment and tenure is clearly a legis-
18 lative function, and the power is clearly a judicial function.
19 We urge the Committee of the Whole to give serious con-
20 sideration to our position on this matter.

21 THE CHAIRMAN: Are there any questions of the

1 minority spokesman as to section 5.11?

2 Any questions of the minority spokesman as to
3 any portion of court structure, sections 5.01 to 5.11?

4 Delegate Scanlan.

5 DELEGATE SCANLAN: Mr. Johnson, I have two
6 questions, one of which I asked the chairman of the
7 majority of the committee, and one of which I neglected
8 to ask him.

9 The first question, the one which I did not ask
10 Chairman Mudd is, are there any precedents in other States
11 of the Union for having commissioners appointed by the
12 courts? I know the United States system, the United States
13 commissioner is appointed by the President of the United
14 States. My question is, is there any precedent among the
15 other States for what is proposed here?

16 My second question is the same one I asked
17 Chairman Mudd: What is the feeling of the minority with
18 respect to permitting the commissioners to exercise other
19 powers apart from those specifically listed, both in your
20 proposal and in the majority proposal, provided that those
21 additional powers are vested by rule? In other words,

1 as the future indicates the commissioners to be trusted
2 to do more, this can be given to them by rule without
3 amendment of the Constitution. Do you have any feelings
4 about that?

5 DELEGATE JOHNSON: To answer your first
6 question, we have not found any State constitution that
7 provides for appointment by the judiciary of a similar
8 function, such as commissioner, or for that matter, if it
9 is analogous, which we think it is, clerks on the lower
10 court. We have not found any States that provide it.
11 We have only found a similar system existing in a federal
12 system.

13 To answer your second question, we did not discuss
14 this specifically, of course, in our minority meeting,
15 but it would certainly be my view that I would be in favor
16 of keeping it general, or perhaps even providing, that is,
17 the powers of the Commissioners general.

18 As far as I am concerned, personally, you could
19 say Commissioners may exercise those powers that are pre-
20 scribed by rule, and I am certainly in favor of the
21 court having the power to increase the power of the

1 Commissioners.

2 THE CHAIRMAN: Delegate Henderson, do you have
3 a question?

4 DELEGATE HENDERSON: No.

5 THE CHAIRMAN: Any other questions of the
6 minority spokesman?

7 Delegate Marvin Smith.

8 DELEGATE M. SMITH: Delegate Johnson, you have
9 just made a statement here about a number of judges being
10 opposed to this appointment power on the part of the
11 commissioner. Now, my notes show that there was one judge
12 who made the statement, one from a metropolitan area,
13 not familiar with the problem, and no others.

14 Now, maybe you have a better recollection than
15 I and can enlighten me.

16 DELEGATE JOHNSON: My recollection, Delegate
17 Smith, is that with very little exception, and that may be
18 just the one exception that you are speaking of, but I
19 don't believe that any judge came before our committee and
20 urged the adoption of the appointive power in the judiciary
21 of the commissioner.

1 I draw an analogy between clerks and commis-
2 sioners, and I felt that the matter was fairly evenly di-
3 vided. I felt that there were a number of judges,
4 according to my notes, that said that they didn't want the
5 power. There were a few that said with respect to clerks
6 now that they did; and there were some who didn't really
7 comment on it, either way.

8 THE CHAIRMAN: Delegate Smith.

9 DELEGATE SMITH: What you were really talking
10 about, then, was not having to do with the commissioners
11 at all, but something else?

12 DELEGATE JOHNSON: If you will accept the fact
13 that either no judges or only one even commented upon the
14 subject of commissioners, I would say that that is correct.
15 My recollection is that there was no specific request by
16 the judiciary to have this appointive power with respect
17 to commissioners.

18 THE CHAIRMAN: Delegate Bradshaw, do you have
19 a question?

20 DELEGATE BRADSHAW: Yes, Mr. Chairman.

21 I would like to ask Delegate Johnson this

1 question, which may in part be a repetition of a question
2 I asked yesterday.

3 I note that in his proposed suggestion for,
4 change in 5.11 that he says, The General Assembly may
5 provide for commissioners, et cetera, and may provide for
6 their appointment.

7 My question specifically is whether or not, if
8 his suggestion is adopted by this Convention, that this
9 would not permit the General Assembly to retain the so-
10 called green bag method of appointment?

11 DELEGATE JOHNSON: I guess it really depends
12 on whether or not you want to put the green bag -- and
13 that is your term, Delegate Bradshaw -- in the hands
14 of the judiciary. I don't think the transfer of the
15 appointive power is going to necessarily lose the "green
16 bag" aura. I would prefer to see the judiciary insulated
17 from this type of appointment, and if it is going to be
18 done by way of green bag, so be it.

19 In my opinion, the new legislature will create
20 the professional office of commissioner, and will provide
21 for an appointive system, and a tenure under the merit

1 system. I have confidence in the new legislature.

2 THE CHAIRMAN: Are there any other questions?

3 Delegate Hargrove.

4 DELEGATE HARGROVE: Delegate Johnson, I am
5 troubled in the minority report by a term used on page 3.
6 You say that you call the function of the commissioner
7 a non-judicial function.

8 Is that your understanding of the function of
9 the bailiff, to issue warrants of arrest?

10 DELEGATE JOHNSON: I don't have that before me.

11 DELEGATE HARGROVE: The end of the first para-
12 graph.

13 DELEGATE JOHNSON: We say the appointment of the
14 commissioner, the selection and appointment of the
15 commissioner, that is the non-judicial function in our
16 opinion. In other words, we will prefer to see the judges
17 not get involved in selecting, interviewing, appointing,
18 having to deal with this number of applications for the
19 position of commissioner. We consider that manner of
20 selection and appointment, that matter of interviewing
21 job applicants non-judicial in nature.

1 DELEGATE HARGROVE: In regard to the Commis-
2 sioners, do you anticipate there would be Commissioners
3 in Baltimore City, Montgomery County, Prince Georges
4 and perhaps Anne Arundel County, which I don't believe in
5 all their instances they have county magistrates today?

6 DELEGATE JOHNSON: In our view it would be
7 clearly up to the legislature.

8 I could ask you what do you think would happen
9 if we left it up to the judiciary. I don't know the
10 answer. I don't know whether the judges would appoint
11 commissioners in those areas or whether or not the legis-
12 lature would. I don't know.

13 THE CHAIRMAN: Delegate Hargrove.

14 DELEGATE HARGROVE: The reason I am asking
15 the question, Delegate Johnson, is if you leave it up
16 to the legislature to create and pretty much determine
17 commissioners, would it have to be under the pro-
18 vision of the local governments generally throughout the
19 State, a public general law, as well as Baltimore City, where
20 they might not be needed?

21 DELEGATE JOHNSON: I think they would be by

1 law, and therefore I would assume a public general law.
2 Yes. I think that would be true. I don't think that
3 they would have to establish the same number of commissioners
4 in each area, no more than they would have to determine the
5 same number of judges in each area.

6 As you know, the legislature decides on how
7 many judges there will be in each specific area,
8 and certainly in my opinion, and in the opinion of the
9 minority, they can also decide on how many commissioners
10 there will be in each and every area.

11 THE CHAIRMAN: Any further questions?
12 Delegate Rush.

13 DELEGATE RUSH: Delegate Johnson, yesterday
14 there was a statement made by Delegate Bradshaw that
15 the cost of revising for salaries alone in the judicial
16 system in the State of Maryland would cost the State
17 approximately \$250,000.

18 As I am told, in 1959, if we had discarded
19 the magistrate court system and then moved into the munici-
20 pal court system, which they have there now as moving up
21 to the district court level, the difference in cost I am

1 told is \$90,000 in 1959; but in 1966 it is \$350,000
2 worth of salaries being paid only in Baltimore City.

3 Do you agree with Delegate Bradshaw's statement
4 of \$250,000 for the whole State?

5 DELEGATE JOHNSON: Well, I think that Delegate
6 Bradshaw gave us the benefit of the information that he had
7 at hand, but I don't think that it is accurate. I don't
8 think it could possibly be a true picture, because it doesn't
9 take into consideration the number of judges that there may
10 or may not be. It indicates, in my opinion, a conserva-
11 tive estimate of judges that will be appointed under this
12 new system, and it likewise doesn't take into consideration
13 how much it will cost to provide new facilities,
14 particularly district court facilities in all these areas
15 where we don't have them.

16 Now, I am in favor of a unified judicial court
17 system, but I think that we would be less than honest with
18 ourselves if we didn't admit that it is going to cost a
19 great deal of money.

20 THE CHAIRMAN: Delegate Rush.

21 DELEGATE RUSH: Do you know how large the

1 court that they just recently built in Baltimore City is
2 right now?

3 THE CHAIRMAN: I am not sure the Chair under-
4 stands your question, Delegate Rush.

5 DELEGATE RUSH: The new one they recently built.
6 Didn't they recently build or approve one?

7 THE CHAIRMAN: Baltimore City?

8 DELEGATE RUSH: Baltimore City, yes.

9 DELEGATE JOHNSON: We haven't built a new court
10 house in Baltimore City. Many of us would like to see that
11 happen. We haven't built a new courthouse that is on the
12 supreme bench level.

13 DELEGATE RUSH: They are in the process of
14 building a building, or they have approved one, one single
15 courthouse, for the tune of \$14 million. Am I correct in
16 that?

17 DELEGATE JOHNSON: I see what you mean. I
18 think -- I may be incorrect about this -- the City Council
19 approved and the electorate approved a loan I think of
20 something like \$11 million for a new Central Police Sta-
21 tion, which will house the court.

1 Now, how much of the money, how much money is
2 attributed to the courtrooms I am not certain about, but
3 certainly several million dollars for the courtroom space
4 in our municipal court level. Yes, I would say that that
5 is so.

6 THE CHAIRMAN: Delegate Rush.

7 DELEGATE RUSH: And everybody, or a lot of the
8 judges have come before us, or people that came and
9 talked to us in our committee said that approximately
10 the round figures would be 60,000 people per population,
11 for one district court judge.

12 Am I correct in that statement?

13 DELEGATE JOHNSON: I think most indicated
14 that was an ideal figure, something in that vicinity, but
15 by the same token, they indicated you really can't be cer-
16 tain about that, but the consensus seems to be 50,000 to
17 60,000 population per judge.

18 THE CHAIRMAN: Delegate Rush.

19 DELEGATE RUSH: Then the figures we heard
20 yesterday were just grabbed out of the air, evidently?

21 THE CHAIRMAN: I am sorry, the Chair didn't

1 understand your question.

2 DELEGATE RUSH: The figures we heard yesterday
3 were just reached up and pulled out of the air?

4 THE CHAIRMAN: Is that a question?

5 DELEGATE RUSH: That is a question.

6 THE CHAIRMAN: What is the question?

7 DELEGATE RUSH: Where did they get the figures
8 from?

9 DELEGATE JOHNSON: I don't know. I think Dele-
10 gate Bradshaw can best answer that. I believe he indicated
11 from the Bureau of Legislative Reference, or Dr. Cooper,
12 I think he said.

13 THE CHAIRMAN: Are there any further questions?
14 Delegate Hodge Smith.

15 DELEGATE J. H. SMITH: In view of the Supreme
16 Court requirement of advising criminals as to their right
17 of counsel, arrest procedure, et cetera, does the minority
18 feel that these commissioners are really court officers now?

19 DELEGATE JOHNSON: Court officers now, or under
20 the proposed system?

21 THE CHAIRMAN: Delegate Smith.

1 DELEGATE J. H. SMITH: Now, or under the proposed
2 system.

3 DELEGATE JOHNSON: I think they are court officers
4 as attorneys are officers of the court. I think that is
5 an analogy. We are officers of the court. I don't know
6 whether or not I am -- I am sure I don't have any judicial
7 function, but I am considered an officer of the court as
8 you are, Delegate Smith, so I would think that they would be
9 an officer of the court in the manner of a clerk, some
10 type of an officer of the court. I am using that term
11 extremely generally.

12 THE CHAIRMAN: Delegate Hodge Smith.

13 DELEGATE J. H. SMITH: Then as an officer
14 of the court, a clerk, don't you think the court should
15 have the right to appoint him?

16 DELEGATE JOHNSON: If you think the court
17 should have the right to determine whether or not you
18 should be a lawyer, I think that would then be the case.
19 I doubt you do. The specific answer to your question
20 is no.

21 THE CHAIRMAN: Any further questions?

1 Delegate Cicone.

2 DELEGATE CICONE: Delegate Johnson, to whom
3 would these commissioners then be responsible? You say
4 they are non-judicial functions, yet they are going to
5 operate under the rules of the court. Would they be
6 responsible to the legislature or to the judicial.

7 DELEGATE JOHNSON: First of all, we are not
8 saying -- we are saying that what is non-judicial is the
9 selection and appointment of the Commissioner. We say that
10 function is non-judicial. We would hope that they would
11 come under a merit system and that they would have an
12 opportunity to exercise the privileges and pleasures of
13 their offices, and the duties of their offices; and be
14 dismissed only for cause. We are appalled at the idea that
15 a commissioner will be, first of all, selected by a district
16 court judge, and then, quote, serve at his pleasure, unquote.
17 We are opposed to that in principle.

18 DELEGATE CICONE: What redress would the judi-
19 cial system have if these commissioners are appointed
20 and they are not qualified? How would they be removed from
21 office?

1 That could tie up the administration of justice.

2 DELEGATE JOHNSON: If in fact they do not
3 perform their fuctions they may be dismissed anyway. Any
4 merit system employee may be dismissed if he doesn't carry
5 out his duties.

6 THE CHAIRMAN: Delegate Schneider.

7 DELEGATE SCHNEIDER: Mr. President, I would
8 just like to clear up one thing that was erroneously said
9 on the floor about the United States Commissioners.

10 THE CHAIRMAN: Is this a question?

11 DELEGATE SCHNEIDER: Yes.

12 Delegate Johnson, is it not true that United
13 States Commissioners are appointed by the judges of the
14 United States District Court, and serve then in the
15 administrative office of the United States lSupreme Court,
16 with a tenure of four years?

17 DELEGATE JOHNSON: I believe that is so.
18 I was under the impression we were writing a State Consti-
19 tution.

20 DELEGATE SCHNEIDER: I think you are correct
21 there. This information is supplied by Delegate Burgess,

1 who is rated number one commissioner in the State of
2 Maryland, and is on our delegation from Prince Georges
3 County.

4 DELEGATE JOHNSON: I congratulate him.

5 THE CHAIRMAN: Are there further questions
6 of the minority spokesman? Any further questions?

7 If not, while he returns to his desk I will ask
8 the clerk to read the amendment.

9 I will ask the chief page to distribute the
10 amendment. It will be Amendment No. 1. Do you have the
11 amendment?

12 The Clerk will read the amendment.

13 MR. QUILLEN: Amendment No. 1, to accompany
14 Minority Report No. BJ-1 to Committee Recommendation No.
15 JB-1, by Delegates Johnson, Harkness, Hickman, Kahl,
16 Murphy, Siewierski, and Rush:

17 On page 1 in line 11 of Section 5.01, Judicial
18 Power, strike out the word "exclusively"; and in line 14
19 after the word "Court" add the following:

20 "and other courts that may be provided by law."
21

1 THE CHAIRMAN: Is the amendment seconded?

2 (Whereupon, the amendment was seconded.)

3 THE CHAIRMAN: The amendment having been moved
4 and seconded, the Chair recognizes Delegate Johnson.

5 This is a period of controlled debate, 15
6 minutes to Delegate Johnson, 15 minutes to Delegate Mudd.

7 Delegate Johnson, you may speak to the amend-
8 ment.

9 DELEGATE JOHNSON: Mr. Chairman, may I say
10 at the outset that the minority committee will probably
11 not need, as we indicated to Chairman Powers of the Calendar
12 Committee, we will not need all of our controlled time.
13 Quite frankly, I didn't think we would reach the judicial
14 article. I am pleased we did reach it so early, but I did
15 not believe we would reach it so early, and I didn't have
16 either the desire nor the inclination to collar other dele-
17 gates to speak on this amendment. Certainly there are
18 members of the minority committee who will speak to cer-
19 tain specific amendments, but they do not desire to speak
20 to each and every amendment for the benefit of the Committee
21 of the Whole.

1 THE CHAIRMAN: May the Chair say that you are
2 not only not compelled to use the entire time allotted to
3 you, but we will be delighted if you do not.

4 DELEGATE JOHNSON: I believe that the remarks
5 that I made to the questions, the issue is very clear with
6 respect to Amendment No. 1 to Section 5.01. If it is in
7 order, Mr. Chairman, I will allot three minutes to Dele-
8 gate Siewierski.

9 DELEGATE SIEWIERSKI: I will give you that privi-
10 lege. You mean to allot it immediately?

11 DELEGATE JOHNSON: To speak to it, yes. I be-
12 lieve I have said about all I can say on that particular
13 section.

14 Delegate Siewierski.

15 THE CHAIRMAN: Delegate Siewierski is recognized
16 for three minutes.

17 DELEGATE SIEWIERSKI: Thank you, Mr. Chairman.

18 Mr. Chairman, fellow delegates, we are confronted
19 with a significant issue. Many people follow some type
20 of procedure in trying to reach a conclusion. The first
21 step is, they usually vote for those with some authority;

1 secondly, they vote for the experience of others, and
2 thirdly, deliberate within themselves.

3 Our request is that you follow this procedure
4 in deciding a question of the restrictiveness of the
5 judicial power for the court or for the State of Maryland.

6 I would like you to consider the model state
7 constitution of the National Municipal League as an
8 authority, or at least a guide on the matter of constitu-
9 tional drafting. This model recommends the section on
10 judicial power include some flexibility by the statement,
11 such courts of limited jurisdiction as may be provided
12 by law.

13 Now, granted it does state limited jurisdiction,
14 but it does provide flexibility.

15 Also, I would like to call attention to the
16 model article of the American Bar Association, which recom-
17 mends a unified court system, but does not use the word
18 specifically, unified. We of the minority are in favor of
19 a unified court system. We feel, however, that the use
20 of the word "exclusively" puts a limit on the flexibility.

21 Secondly, may we look to the experience of

1 others. Not one state constitution uses the term "ex-
2 clusively" in its document. There are 38 state consti-
3 tutions containing a provision to the effect that the
4 General Assembly may provide for the establishment of
5 various courts.

6 Now, it is true that eleven of these state
7 constitutions provide general power; that is, there is no
8 limit as to the type of court, be it limited jurisdiction,
9 on regional jurisdiction or whatever it would be.

10 I would also like to point out that there are
11 only four constitutions which limit the type of courts
12 to those provided within the constitution itself.

13 Further, I would like to point out that only
14 five state constitutions remain silent on the question of
15 the establishment of other courts.

16 Thirdly, I would like to point out that only
17 three state constitutions do not specify any court struc-
18 ture whatsoever, and hence provide a great deal of
19 flexibility, perhaps too great.

20 THE CHAIRMAN: Delegate Siewierski, you have a
21 little less than a half-minute.

1 DELEGATE SIEWIERSKI: I will now come to the
2 t hird decision-making process, the supplemental arrange-
3 ment, and ask you to consider the problems that will come
4 about from too much restriction. I ask you to consider
5 the requirements of one restriction do not result in
6 control of other courts, and finally ask you to consider
7 the minority's amendment and provide for a unified but
8 flexible court system.

9 THE CHAIRMAN: Before recognizing Delegate
10 Mudd, the Chair would like to acknowledge the presence in
11 the gallery of the rostrum of 25 students from Kenwood
12 Senior High School in Baltimore County, and in the rear
13 gallery 55 students from St. Michaels Elementary School
14 in St. Michaels. We are delighted to have you with us.

15 (Applause.)

16 The Chair recognizes Delegate Mudd to speak
17 against the amendment.

18 DELEGATE MUDD: Mr. President, I rise to speak
19 in opposition to the amendment. I am opposed to Section
20 5.01. The amendment proposes to eliminate from the
21 majority recommendation the word "exclusively".

1 Admittedly the word "exclusively" is not in the
2 present Constitution. However, in operation, under the
3 existing court structure of Maryland, the constitutional
4 court structure, the courts have in every instance except
5 one been accomplished by constitutional amendment, as
6 would be permitted under the same flexibility of the language
7 proposed by the majority report.

8 It is the view of the majority that the court
9 structure, the unified court system proposed, can only be
10 as strong as the weakest link in the chain.

11 If the amendment is adopted, which allows other
12 courts that may be provided by law to be created at the
13 will of the legislature, it is inevitable it seems to the
14 majority that such authority could impair the unified,
15 possibly uniform jurisdiction of the court structure proposed.
16

17 Only by a constitutional amendment, adopted by
18 this state, to provide for a special Court of Appeals has
19 Maryland heretofore allowed its legislature to provide by
20 law for other courts, and in that instance the allowance
21 to the legislature providing for other courts was only at

1 the appellate level. Accordingly, the use of the word
2 "exclusive" in the proposed draft does nothing more than
3 emphasize the system as it has prevailed in Maryland under
4 our hundred-year-old Constitution, and we respectfully
5 suggest that the inclusion in the Constitution of an
6 affirmative grant of power to the legislature to provide
7 for unified courts could operate to the great prejudice
8 and disorganization of the proposed new type of court.
9 We respectfully suggest that the recommendation of the
10 committee is the protection that we need to preserve the
11 unified, uniform court structure under the four-tier idea,
12 which is the most progressive thinking in the legal world
13 today regarding court structure.

14 It is not inconsistent with the ABA model ap-
15 proach to the judiciary article, and we therefore respect-
16 fully urge a vote against the proposed amendment.

17 THE CHAIRMAN: The Chair recognizes Delegate
18 Johnson.

19 DELEGATE JOHNSON: I will call upon Delegate
20 Gleason and allot three minutes to Delegate Gleason.

21 THE CHAIRMAN: The Chair recognizes Delegate

1 Gleason.

2 THE CHAIRMAN: The Chair recognizes Delegate
3 Gleason to speak in favor of the amendment for three
4 minutes.

5 DELEGATE GLEASON: Mr. Chairman, fellow dele-
6 gates, let me say at the outset that I am sure all the
7 delegates to this Convention believe in recommending for
8 the people of Maryland a strong judiciary, they believe
9 secondly in recommending to the people a strong executive,
10 and thirdly, they believe in recommending a strong legis-
11 lative branch to the government. The principle involved
12 is that the powers of government should be balanced so
13 that each branch of government can carry out effectively
14 its own responsibilities. However, there is another
15 principle that I think has been traditional in the annals
16 of government in the United States. That principle is
17 that the power of each branch of government should also
18 have some restraints and some checks and I think that it
19 is in this respect that the majority report falls down
20 when it removes from the power of the legislature at some
21 time in the future, when conditions warrant, the ability

1 to recommend and to put into effect additional courts.

2 I think throughout the entire recommendation of
3 the majority report the strengthening of the judiciary has
4 taken effect in all of its aspects, with respect to ap-
5 pointment, removal, to the conduct in office, but I do
6 think that in this regard that we ought not to take away
7 from the Legislative Branch the ability to adjust itself
8 to conditions that may occur sometime in the future, which
9 the powers of the judiciary in establishing a division
10 within a court, a tier of court would not adjust itself
11 to, so therefore I would urge that in this respect and on
12 this amendment alone that we give back to the legislature
13 the power to adjust itself to situations that might occur
14 sometime in the future.

15 THE CHAIRMAN: Delegate Mudd.

16 DELEGATE MUDD: Mr. Chairman, I would like to
17 yield three minutes to Delegate Henderson to speak in
18 opposition to the amendment.

19 DELEGATE HENDERSON: Mr. Chairman, fellow dele-
20 gates, as Chairman Mudd has pointed out, it seems to me
21 that this proposal, this amendment, would cut the heart

1 out of the basic concept of the unified judicial system.
2 It would open the door to the creation of miscellaneous
3 courts throughout the whole judicial structure.

4 I suggest that this is quite unnecessary.

5 The proposal of the majority in the majority
6 report recommends you leave completely to the legislature
7 the creation of such administrative courts, elect the
8 Appeals Tax Court, elect the Zoning Boards, elect the
9 Workmen's Compensation Commission, and the many other
10 administrative courts. It would still be within the power
11 of the legislature the full control to create courts in
12 that order. It would not and should not be left to the
13 legislature to create courts within the unified four-tier
14 judicial structure. That is a matter of internal house-
15 keeping, which I suggest should be left to the courts.

16 Let us take just one example; for example, it
17 has been suggested that the legislature might, or some
18 people might advocate or want creation of a Domestic
19 Relations Court. That is a court which would be a com-
20 posite, I take it, of certain functions which are now
21 assigned to the Superior Court level. It would probably

1 effect something of a merger, perhaps, or a coordinated
2 effort between the Equity Courts which are handling divorce
3 cases and the Juvenile Courts, which are handling child-
4 ren, but the problem is an administrative one, I suggest.
5 It is a question of coordinating existing facilities and
6 providing new ones to deal with this with the aid of
7 expert professional advice, depending not so much on the
8 personality of the judge, but on the professional staff
9 which attacks these problems on a coordinated basis.

10 Now the legislature under this amendment is left
11 perfectly free to create new courts of action, but I sug-
12 gest they should not be allowed to create separate courts;
13 that that is a matter which should be left strictly to
14 the judiciary.

15 THE CHAIRMAN: Delegate Johnson.

16 DELEGATE JOHNSON: I yield three minutes to
17 Delegate Kahl.

18 THE CHAIRMAN: Delegate Kahl is recognized to
19 speak in favor of the amendment.

20 DELEGATE KAHL: I can certainly see the neces-
21 sity of reforming our state's judicial system by adopting

1 a unified and uniform system, thus eliminating the confu-
2 sion of having variations of lower courts from one area
3 to another. However, the committee's recommendation gives
4 us an exclusive unified system, which vests judicial
5 power in a four-tier system, fellow delegates; this word
6 "exclusively", as provided in the committee's recommenda-
7 tion, has me quite troubled.

8 We are writing a document which we intend to
9 last at least as long as our 1867 Constitution. Then may
10 I ask how can we project ourselves so far in the future to
11 determine that new courts will not be necessary or needed
12 in Maryland.

13 The legislature is given no flexibility with
14 which to work. Of course, the committee feels the func-
15 tional divisions can provide the flexibility which is
16 needed in a four-tier unified court system. But I am
17 afraid we are going to get so cluttered with functional
18 divisions on our lower court level that divisions will get
19 married within each other and cases will not get the
20 attention they should have.

21 I visualize so many functional divisions forming

1 that our lower court system will get so large we will be
2 put right back into another hodge-podge system, and con-
3 fusion will reign.

4 I frankly see no difference in a system of this
5 type than our present system.

6 We will have a four-tier system, with such a
7 variety of divisions, that in reality it will not be a
8 four-tier system at all. But my major concern rests with
9 the word "exclusively".

10 You are in fact tying the hands of our future
11 legislators if indeed they feel specialized courts are
12 necessary.

13 Many delegates are under the impression that the
14 minority added on other courts that may be provided by
15 law in order to retain such courts as our Orphans' Court.
16 This is indeed a fallacy and the minority had no intention
17 to do this; nor could they, if that was their intention.

18 We must not forget that any specialized court
19 established by the legislature would under the minority
20 draft, would also be a court of uniform jurisdiction,
21 applicable over the state, not just in one particular area.

1 THE CHAIRMAN: Delegate Kahl, you have one-half
2 minute.

3 DELEGATE KAHL: Thank you.

4 Delegate Mudd stated that the word "exclusively"
5 is not used in our present Constitution. May I also remind
6 you that the word "exclusively" is not provided for in
7 any state constitution.

8 Thank you.

9 THE CHAIRMAN: Delegate Mudd.

10 DELEGATE MUDD: Mr. Chairman, may I yield three
11 minutes to Delegate Hodge Smith?

12 THE CHAIRMAN: Delegate Hodge Smith.

13 DELEGATE H. SMITH: Mr. Chairman, fellow dele-
14 gates: The minority has told us in their memorandum that
15 this is the fundamental section of the article, and then
16 by the same token they propose to cut the heart right out
17 of this fundamental section.

18 Yes, sir, the minority spokesman told us that
19 this was not a guts amendment. I took that to mean that
20 they did not feel one way or another, that it was too
21 important, that other amendments that they would offer would

1 be more important, but certainly it is a hearts amendment.

2 The Institute of Judicial Administration, which
3 studied the Maryland judicial system and prepared a
4 lengthy and well-documented report, says that the essen-
5 tials of a sound judicial system are as follows, and num-
6 ber one is a simple, unified court structure. Then they
7 say good judges, businesslike administration, efficient
8 rules and sound financing. That is what we think we pro-
9 vided in this article, but Section 5.01 sets up the
10 simple, unified court structure.

11 Now, Maryland does not now have the simple
12 unified court structure, and the aim of 5.01 is to give us
13 one.

14 In this state we have about 16 different kinds
15 of courts. They range from our Court of Appeals to the
16 Circuit Courts, and six of them in Baltimore City; then
17 we have the multiplicity of Orphans' Courts, Trial Magis-
18 trates, Municipal Courts, People's Courts, Justices of
19 the Peace, Committee Magistrates and Housing Courts.

20 The aim of this Section 5.01 is to put all of
21 this structure in a simple unified system. The minority

1 amendment would permit this proliferation of courts,
2 which is the very thing we are trying to get away from.

3 We have heard a lot about the New York Consti-
4 tution, and the fact that one of the reasons that it
5 failed was that it did not provide the reforms that the
6 people wanted in the State of New York.

7 If you look at this judicial article, you can
8 see one of the reasons that no reforms were offered.

9 THE CHAIRMAN: Delegate Smith, you have a little
10 less than half a minute.

11 DELEGATE H. SMITH: Their court system up there
12 has about 14 different levels, including, if you will,
13 a Peacemakers Court and an Indian Court, so they provide
14 something for everybody, and I submit to this Convention
15 that the whole purpose of this section is to avoid the
16 proliferation of courts. Please do not adopt this
17 amendment.

18 THE CHAIRMAN: Delegate Johnson.

19 DELEGATE JOHNSON: Mr. Chairman, I wonder if I
20 could reserve a few minutes to close, with the understand-
21 ing that the majority chairman would have a like opportunity.

1 I have no other particular speakers to call upon, although
2 I have something myself to add.

3 THE CHAIRMAN: The Chair recognizes Delegate
4 Mudd.

5 DELEGATE MUDD: May I yield three minutes, Mr.
6 Chairman, to Delegate Hargrove?

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Hargrove.

9 For what purpose does Delegate Malkus rise?

10 DELEGATE MALKUS: I will be back later, Mr.
11 President. I want to ask the chairman if you yield to a
12 question.

13 THE CHAIRMAN: The Chair recognizes Delegate
14 Hargrove.

15 DELEGATE HARGROVE: Mr. Chairman, fellow dele-
16 gates, I rise to oppose the amendment of the minority
17 report. I think there is more perhaps to a unified court
18 system than the courts themselves. We have not touched
19 on one very important aspect of our present court system,
20 which in my opinion needs uniformity in the worst kind of
21 way.

1 I think generally what we are talking about
2 when we talk about a unified system is a reform generally
3 of the lowest court system.

4 We of the majority did not go about this report
5 in a very haphazard manner. We had the benefit of many,
6 many studies. I would only suggest, in addition to what
7 Delegate Hodge Smith has said, that one of our delegates,
8 Delegate Case, made a complete study, the Commission made
9 a complete study of the inferior court system in this
10 state and recommended to the state the thing which the
11 majority report suggests.

12 However, there is one other area which I would
13 like to point out. This is in the area of procedure.

14 As you go around the State of Maryland, from the
15 Superior Court and into the lower courts, the procedure
16 for trying cases, the jurisdiction, the monetary juris-
17 diction, varies from county to county, from say \$100 to
18 \$3,000. A lawyer who practices law in the State of
19 Maryland, all he has to do in many areas, such as from
20 Baltimore County, from Baltimore City to Anne Arundel
21 County and the various counties, step over an imaginary

1 line and he does not know how to practice law. This is one
2 of the very important aspects of reform.

3 I cannot imagine that if we would allow the
4 state legislature to create inferior courts that if suffi-
5 cient pressure were put on them, that they could not cre-
6 ate a lower court for claims, and which could be placed
7 in a functional division. If this were not the case,
8 again we would be back to the practice of whether or not
9 I could file a \$500 suit or a \$600 suit in Peoples' Court
10 of Baltimore County, or should I have to look to the
11 statute, which in many instances is very obscure as to
12 jurisdiction, to go into some other jurisdiction.

13 THE CHAIRMAN: Delegate Hargrove, you have a little
14 less than half a minute.

15 DELEGATE HARGROVE: We need in this state a uni-
16 fied system.

17 The proposal of the majority gives us that
18 system. It gives us a system which provides for functional
19 divisions, and many, many innovations which we do not have
20 today, and I submit it will provide us with a very com-
21 plete and adequate system for many years to come. Thank you.

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3 THE CHAIRMAN: Delegate Johnson, Delegate
4 Mudd has left to him now only three minutes of controlled
5 debate. The Chair suggests that now would be the time
6 for you to conclude your debate or call on someone else
7 to do so.

8 DELEGATE JOHNSON: Thank you very much, Mr.
9 Chairman.

10 Unfortunately, fellow Delegates, you are being
11 asked to consider a matter that really is not relevant
12 to the question, I submit.

13 The majority implies it is the minority's
14 intention to destroy the unified judicial court system.
15 That is certainly not the case. That is certainly not our
16 intention, and even if it were our intention, we could
17 not do so by adopting the language in the majority report,
18 which we have approved, and urge.

19 In our amendment, Section 5.01 would read as
20 follows:

21 The judicial power of the state is vested in a
unified judicial system, composed of the court of appeals,
the intermediate appellate court, the superior court,
the district court, and other courts, as may be provided

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3 by law.

4 Now, I, nor does the minority, distrust the
5 legislature. The legislature is going to have to,
6 by virtue of this article, determine the jurisdiction
7 that will be allotted to each specific court.

8 Now, if the majority is afraid that the legislature
9 will create a proliferation of the other magistrate court
10 or courts, inferior courts, then I would submit they
11 should be equally concerned about the fact that the legis-
12 lature may withhold certain jurisdiction because all the
13 legislature would have to do is not grant jurisdiction to
14 the district court or to the superior court on matters,
let's say, pertaining to traffic court cases.

15 It is clearly up to the legislature to set the
16 jurisdiction. They may withhold traffic court cases
17 from the district court and then set up a quasi-judicial
court for this function.

18 I do not believe that they are going to do that
19 and I do not believe that they are going to create a system
20 smilar to what we have now.

21 The entire purpose for the minority in bringing

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3 this amendment before you was for the Committee of the
4 Whole to decide whether or not it wanted to write a
5 flexible document, whether or not it was going to put trust
6 in its legislature to follow through with the tenets
7 of Article V, and to give the various courts, the specific
8 courts set forth in there, the superior court, district
9 court, et cetera, their jurisdiction in accordance with
10 the jurisdiction that the other courts now have under the
11 present system, but reserve--reserve, I submit -- the
12 right to create other courts, special courts, as the need
may in the future require.

13 May I reiterate that under the present system,
14 in this day and age, Article V, as written by the majority
15 will take care of all our needs. So this is the reason
16 why we say it is not a "gut" issue, but we feel we should
17 bring issue before the Committee of the Whole to determine
18 whether or not it wanted to provide for some flexibility
19 in the document, specifically, with respect to judicial
20 power and for that reason I am going to vote for our
amendment.

21 THE CHAIRMAN: Delegate Mudd, you have three

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3 minutes left of controlled debate in this portion.

4 DELEGATE MUDD: Thank you, Mr. Chairman.

5 I respectfully disagree, ladies and gentlemen
6 of the committee, with two observations by the distinguished
7 Delegate Johnson who speaks for the minority.

8 It seems to me that this is a "gut" issue.
9 It goes to the core of the overall idea of the majority.

10 We do not imply that it is the intention of the
11 minority at this time or at any future time to disrupt
12 or impair in any way the unified court structure proposed
13 by the majority report.

14 We do suggest that by this amendment the
15 minority may inadvertently open the gates to the
16 legislature, not necessarily now, but in the years to
17 come, unintentionally create a special court that could
18 completely disrupt the orderly housekeeping responsibilities of a unified, uniform court structure.

19 It is that fear which prompts the majority
20 to urge you to vote against this amendment, which in our
21 humble judgment is the key responsibility of the majority
to have this convention adopt the essentials of a unified,

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3 uniform court structure to best serve the people of
4 Maryland.

5 THE CHAIRMAN: There is now available under the
6 debate schedule 15 minutes of uncontrolled but limited
7 debate.

8 The Chair First recognizes anyone desiring to speak
9 in favor of the amendment. Do you desire to speak in favor
10 Delegate Rybczynski?

11 DELEGATE RYBCZYNSKI: Yes, sir. Before you
12 start your stop-watch, I would greatly appreciate your
13 welcoming to our convention two gentlemen sitting over
14 your left shoulder, State Commander James Gay and First
15 Vice Commander Francis Connor of the Catholic War Veterans
16 of Maryland, who are here this morning to see the
17 Governor on official business and who are sitting here
18 to observe our proceedings.

19 THE CHAIRMAN: Delighted to have them with us.
20 (Applause) Before you start to speak, the Chair also
21 would like to recognize the presence in the rear gallery
of 40 ninth grade students from South Carroll
High School in Carroll County. Delighted to have them

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3 with us. (Applause)

4 THE CHAIRMAN: Now, Delegate Rybczynski, the
5 stop-watch.

6 DELEGATE RYBCZYNSKI: Mr. Chairman, I think that
7 most of the people in this room who are not lawyers will
8 be greatly surprised to learn that today, this very
9 minute, and for quite some time, the State of Maryland
10 has been operating under a four-tier system. We have on
11 the one side of our building a Court of Appeals, on the
12 other side of our building we have a Special Court of
13 Appeals, on the Church circle we have a Circuit Court,
14 which is the third tier, and in the basement of that
15 same building is the People's Court, which amounts to a
16 four-tier.

17 This is in existence today. And as part of that
18 existing system, we also have some specialty courts.

19 Now, Mr. Chairman, a very interesting phrase
20 was used here this morning: Administrative courts.

21 I think it hits very well to the very hart of
this entire situation. I suggest to you, Mr. Chairman,
that what we will do is to cause subterfuge in the future.

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3 Now there is already concern about the question
4 of who will be sitting in juvenile court.

5 Is this a concern? Certainly so. Not one
6 person in this room would want to have his 13 or 14-year
7 old son tried by the same judge who just recently got
8 through a murder case, or who just recently got through a
9 bad robbery case.

10 Specialties must exist within our system, or
11 it will be self-defeating.

12 We know about a tax court at this time, operated
13 by specialists. We know about an administrative court
14 called Workmen's Compensation Commission, which handles
15 specialties.

16 As the vote population increases, it will be
17 necessary for us to consider worrying about who is going
18 to try both cases. There will be more airplanes and more
19 helicopters. Who will be handling those cases?

20 If you don't have some advance information in these
21 fields you must do a lot of advance study before
each case. This is fine as long as the docket is not
crowded, but as the population grows, and these cases

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3 grow, it will be impossible for a judge to take out
4 two or three or four days to study in advance about the
5 specialties.

6 We must leave room within this system for
7 specialties.

8 THE CHAIRMAN: Delegate Rybczynski. You have a
9 little less than half a minute.

10 DELEGATE RYBCZYNSKI: I am going to suggest
11 to Chairman Mudd that if he in fact prevails on this
12 question, then he must give some consideration to placing
13 in another ~~section~~ section of this same article the words "non-
14 rotating," so that there will be judges available within
15 specialties who are specialists.

16 I suggest to you, Mr. Chariman, this is an
17 excellent amendment.

18 THE CHAIRMAN: Does any delegate desire to speak
19 in opposition?

20 Delegate Clagett?

21 DELEGATE CLAGETT: Mr. Chairman, I rise in
opposition to the amendment because I am persuaded by the
argument of the majority, both through its chairman

1
2
3 and Delegate Henderson and others.

4 I wish to draw a very simple parallel,
5 and ask that this be considered carefully, particularly
6 by those who are not lawyers, but who have expressed
7 concern about the concentration of the judicial power in
8 the judiciary, free of legislative tampering by use of the
9 word "exclusively."

10 Assume for the moment that your business is an
11 insurance business, and it is an incorporated business, with
12 the officers and usual Board of Directors.

13 Is it not logical, and is it not the best method
14 of procedure, to permit those officers or that Board
15 of Directors to determine the necessity of an additional
16 assistant in the activity of that business?

17 For example, you want to expand and take on
18 another line of insurance, assuming for the moment
19 that it is home owners liability or fire or some other
20 specialized type of insurance activity.

21 Is it not the best way of approach that
when the need for that expansion is there, that the
officers and the Board of Directors determine that this

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3 additional desk shall be added, and the additional secre-
4 tary to assist that particular assistant, rather than
5 to permit the stockholders of the corporation to make
6 such a decision? Would not the stockholders be more sus-
7 ceptible to outside influences, rather than an awareness
8 of the orderly operation and management and function of
9 the internal affairs of particular business? And should
10 not those officers be the ones to determine whether or
11 not that additional desk and the accompanying secretarial
12 assistant, et cetera, be added.

13 It seems to me that logic persuades us that
14 the answer is certainly in the affirmative, and by using
15 that simple parallel, I think you can appreciate what is
16 being attempted to be done by the majority report.

17 Therefore, I would urge you to vote against this
18 amendment, which would certainly disrupt orderly
19 business procedure.

20 THE CHAIRMAN: Does any delegate desire to speak
21 in favor of the amendment? Delegate Malkus?

22 DELEGATE MALKUS: Mr. President, I want
to recall to the Members of the Legislature that several

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2
3 years ago, when the Court of Appeals was on their knees
4 and begging for help, they wanted a court of special
5 appeals. We had long and lengthy debate, but we decided
6 then to create a court of special appeals to take care
7 of certain matters.

8 Judge Albert Menschine, in his wisdom, and he
9 is a wise man, came before the committee and said, do not
10 restrict us. There may be other fields other than the field
11 of crime that we may need courts of special appeals.

12 That was sent to the voters, Mr. President,
13 and you know what the answer was.

14 We gave the legislature the right to increase
15 or add other courts to the Court of Special Appeals.

16 I just wanted to leave that with you.

17 Now, Mr. President, I want to talk about something
18 else. Yesterday I asked a question, what is this going
19 to cost, and I had the understanding that I would know
20 in writing what will be the additional cost to the taxpayers
21 of the State of Maryland.

I was a little bit late here this morning and I
have checked over my papers on my desk and now I would

1
2
3 like to ask the Chairman if he will tell me if we
4 have prepared, what is going to be the cost of this court
5 reform.

6 Now, it might not be important to you people
7 here in the Convention. Many of you are one-timers. But
8 it is important --

9 THE CHAIRMAN: Delegate Malkus, you have one-
10 half minute.

11 DELEGATE MALKUS: Thank you, sir. I can finish
12 within that time.

13 I think it is important that we know in writing,
14 and that we will establish into the record what is this going
15 to cost.

16 I finish by asking the Chairman when could we
17 expect that written report?

18 THE CHAIRMAN: Is there any other delegate
19 desiring to speak in opposition to the amendment?

20 DELEGATE CASE: Mr. Chairman, ladies and
21 gentlemen of the committee, since at least two courts that
I had something to do with establishing in this state
have been discussed in debate, and since there has been

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2
3 misinformation give^v to you about both of them, I think
4 the time has come to set the record straight.

5 The argument has been made that if the
6 word "exclusively" is left in as proposed by the committee
7 then the legislature wouldbe hamstrung to establish
8 other and different tribunals to deal with special
9 subjects.
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1 I submit to you this is just not so. The pres-
2 ent Constitution, while it does not use the word "exclu-
3 sively", implies as much, because it states in fact,
4 where the judicial power shall lie and it says the judi-
5 cial power shall be the Court of Appeals, Intermediate
6 Appellate Courts, Orphans' Courts, and such courts in
7 the City of Baltimore as are hereinafter provided for.

8 This is a direct quote from the present Consti-
9 tution, and yet, when it was necessary to establish a
10 Tax Court, or the Public Service Commission, no one thought
11 it was necessary to amend the Constitution to do this.
12 As a matter of fact, I prepared the legislation which set
13 up the Tax Court, and the Commssion which I headed
14 conceived the idea. It was passed during Governor Tawes'
15 administration. This is a statutory court and I submit to
16 you that the General Assembly, even with the word "exclu-
17 sively" in this particular draft, would still have the
18 power to set up bodies which will be determinative bodies
19 but which will not have the judicial power. This is the
20 important thing.

21 So there is just nothing to this argument that

1 the legislature will be hamstrung, will not be able to
2 meet the need of her citizenry if this wording is in the
3 Constitution.

4 Now, with reference to Delegate Malkus, he is not
5 here now, I hope he had better luck shooting geese than he
6 did on his first speech this morning, because it is just
7 not so that the Constitution and the statutes implementing
8 the Intermediate Appellate Court, which I drafted, provide
9 that the legislature can establish new courts. It does not
10 say that.

11 What it says is that the legislature can en-
12 large the jurisdiction of the present Intermediate Appel-
13 late Court; the Intermediate Appellate Court is set by
14 the Constitution. Its jurisdiction is delineated in the
15 legislature.

16 THE CHAIRMAN: You have one-half minute, Dele-
17 gate Case.

18 DELEGATE CASE: This is as it should be. This
19 is what the draft contemplates.

20 Now, I suggest to you ladies and gentlemen that
21 the word "exclusive" is an important word. It will insure

1 the integrity of the four-tier system and does not depart
2 appreciably from what we have today. I urge that the
3 amendment be defeated.

4 THE CHAIRMAN: Any other delegate desire to
5 speak in favor of the amendment?

6 Delegate B. Miller?

7 DELEGATE B. MILLER: I have a question, Mr.
8 Chairman. You now have two questions.

9 THE CHAIRMAN: To whom is the question directed?

10 DELEGATE B. MILLER: My first question is to
11 Chairman Mudd.

12 THE CHAIRMAN: I first have to see if someone
13 desires to speak in favor of the amendments.

14 Delegate Churchill Murray.

15 DELEGATE C. MURRAY: Mr. Chairman, fellow dele-
16 gates, it is rather entertaining to see how the discussion
17 flows back into my lap, because my very good neighbor and
18 very good friend used a business with which I am quite
19 familiar to illustrate his point.

20 Flexibility -- and I am, as so often is the
21 case, uncertain as to the proper course to take. What

1 bothers me is the proposed plan of Court of Appeals. What
2 bothers me even more are the people who advocate it as
3 it is. Like many other people, when in doubt I am apt
4 to be influenced by my respect for those who advocate or
5 oppose a thing.

6 THE CHAIRMAN: Delegate Murray, may I interrupt
7 you a second?

8 If you use the full three minutes you are al-
9 lotted, you will use up all of the remaining time and
10 prevent Delegate Miller from asking a question. I ask
11 you only if you can to save at least a minute or so.

12 DELEGATE C. MURRAY. Yes, sir.

13 I am going to support the amendment because I
14 know of a business that comes very close to home in this
15 respect. Did this concern something that was for the
16 day, for the week, for the month, for the year, I
17 would take a different position, but I have in mind a
18 business which is under a buy and sell agreement, that
19 happens to be a business that has for years been adver-
20 tised with the word "exclusively" in the title, but the
21 purchasers of this business are not restricted to a

1 continuation of that business exclusively, because it is
2 impossible to know what the needs will be.

3 I shall support the amendment.

4 THE CHAIRMAN: Thank you.

5 Delegate Mudd, would you yield to a question from
6 Delegate Beatrice Miller?

7 DELEGATE MUDD: Yes, Mr. Chairman.

8 THE CHAIRMAN: Delegate Miller, there is avail-
9 able just one minute. If you could state your question
10 quickly and let Delegate Mudd answer it.

11 DELEGATE B. MILLER: Could you tell us precisely
12 just what the word "exclusively" would prevent the legis-
13 lature from doing and why the majority has put it in.

14 DELEGATE MUDD: Well, in answer to that question,
15 Delegate Miller, it has been put in to emphasize, I
16 should say, exactly what has existed under the present
17 Maryland Constitution, as very ably explained by Delegate
18 Case a couple of minutes ago.

19 The situation under the present Constitution is
20 that the word "exclusively" is not therein contained,
21 but the judicial power of the state is vested in certain

1 courts, and except with respect to the Court of Special
2 Appeals, created by constitutional amendment, wherein the
3 creation of other courts is left to the legislature and
4 the legislature under the present Constitution does not
5 have the power to create courts.

6 Does that answer your question?

7 THE CHAIRMAN: I am sorry, that is the end of
8 the controlled debate period under the debate schedule.

9 Delegate Dukes?

10 DELEGATE DUKES: Is a motion in order at this
11 time to suspend the debate schedule?

12 THE CHAIRMAN: The Committee of the Whole has
13 no power to suspend the rules or change the debate
14 schedule. That could be accomplished only by the Conven-
15 tion.

16 DELEGATE DUKES: May I make a parliamentary
17 inquiry, will you please advise me the method by which
18 we can suspend the rules?

19 THE CHAIRMAN: The only way it can be accomp-
20 lished would be for the committee to rise and request the
21 Convention to amend the debate schedule or to amend the

1 debate schedule or to amend the debate schedule.

2 DELEGATE DUKES: If that motion is in order
3 I would make that motion.

4 THE CHAIRMAN: Motion is made that the committee
5 rise, and do you want a specific request to amend the
6 debate schedule.

7 DELEGATE DUKES: I would like another 30 minutes.

8 THE CHAIRMAN: The motion is made that the
9 committee rise and request the Convention to amend the
10 debate schedule, to allow an additional 30 minutes of
11 debate on Amendment No. 1. Is the motion seconded?

12 THE CHAIRMAN: Is there any discussion? All in
13 favor -- I think perhaps we had better have a roll call
14 vote on this motion.

15 Will the clerk please sound the quorum bell?

16 Delegate Chabot?

17 DELEGATE CHABOT: Would it not be in order,
18 even if this motion is adopted, for the Convention itself
19 to amend the debate schedule to permit a shorter period
20 of time, notwithstanding that we had voted on the 30
21 minutes?

1 THE CHAIRMAN: It may be.

2 DELEGATE CHABOT: Thank you.

3 THE CHAIRMAN: The question arises on the motion
4 that the committee rise and request the Convention to
5 amend the debate schedule so as to allow an additional
6 30 minutes of debate on Amendment No. 1.

7 As the Chair has indicated, the Convention could
8 allow either a shorter or longer period, or none at all.
9 A vote Aye is a vote in favor of the motion to rise.

10 For what purpose does Delegate White rise?

11 DELEGATE WHITE: Is the motion to rise for the
12 purpose stated debatable?

13 THE CHAIRMAN: It is not.

14 THE CHAIRMAN: A vote Aye is a vote in favor
15 of the motion to rise. A vote No is a vote against.
16 Cast your vote.

17 Has every delegate cast his vote? Does any
18 delegate desire to change his vote? The clerk will record
19 the vote.

20 There being 62 votes in the affirmative and 68
21 in the negative, the motion is lost.

1 The question arises -- the clerk will please
2 sound the quorum bell.

3 For what purpose does Delegate Storm rise?

4 DELEGATE STORM: I wanted to ask you, Mr.
5 Chairman, if it was possible to divide this question, and
6 have two votes, one on the use of the word "exclusively",
7 which I understand is clearly implied, that it is exclu-
8 sive and whether or not we need to add that word, and
9 then the other, it seems to me we have two distinct ques-
10 tions in this amendment and if it is in order I would
11 like to suggest that we vote on them separately.

12 THE CHAIRMAN: Delegate Johnson?

13 DELEGATE JOHNSON: Mr. Chairman, the only
14 reason we deleted the word quote exclusively unquote is
15 because we felt it would be inconsistent to use the word,
16 "exclusively", and then go on to say, "in such other courts
17 as the legislature may provide."

18 THE CHAIRMAN: That is the question troubling
19 the Chair right now as to whether the question can be
20 divided.

21 DELEGATE JOHNSON: I might say whether or not

1 you use the term "exclusively" in this particular section,
2 for all intents and purposes, these courts would be ex-
3 clusive courts anyway, in my opinion, but we deleted the
4 word, for no other reason, other than the fact that it
5 would be inconsistent to use it and then provide for
6 other courts as the future may require.

7 THE CHAIRMAN: I do not see how the Chair can
8 divide the question unless we divided it by voting first
9 on the word "exclusively", and if the motion is lost,
10 it seems to me that we could not vote then on the second
11 part of the amendment.

12 I do not believe the question is susceptible of
13 division. The Chair rules that it cannot be divided.

14 Delegate Chabot?

15 DELEGATE CHABOT: Parlimanetary inquiry, Mr.
16 Chairman.

17 Would it then be in order, if this motion
18 should fail, to make a separate motion to strike the word
19 "exclusively" only.

20 THE CHAIRMAN: A separate amendment to the
21 amendment? It would be in order.

1 DELEGATE CHABOT: Thank you, sir.

2 THE CHAIRMAN: Are you ready for the question?

3 The question arises on the adoption of Amendment
4 1, which, as it is before you, would strike the word
5 "exclusively" in line 11, and add the words "and other
6 courts that may be provided by law," in line 14. A vote
7 Aye is a vote in favor of the amendment. A vote No is
8 a vote against. Cast your votes.

9 Has every delegate voted?

10 Does any delegate desire to change his vote?

11 The clerk will record the vote.

12 There being 37 votes in the affirmative and 87
13 in the negative, the motion is lost. The amendment fails.

14 Is there any other amendment to Section 5.01?

15 I believe the clerk has it.

16 THE CHAIRMAN: Delegate Mentzer?

17 DELEGATE MENTZER: I wonder if it is possible
18 for the Chair to tell us the number of abstentions on
19 that vote. Is that available at the Chair?

20 THE CHAIRMAN: Yes, indeed.

21 The number nonvoting, which would include

1 abstentions -- I have no way to tell how many were present
2 and abstained -- was 18.

3 Delegate Carson, do you desire to offer the
4 amendment?

5 DELEGATE CARSON: Mr. Chairman, I would like to
6 remove my amendment at this time, which is No. --

7 THE CHAIRMAN: This will be Amendment No. 2. The
8 clerk will read the amendment.

9 MR. QUILLEN: Amendment No. 2 to Committee Recom-
10 mendation No. JB-1 by Delegate Carson:

11 On page 1, Section 5.01, titled Judicial Power,
12 line 13, strike out the word quote, superior, unquote,
13 and insert in lieu thereof the word "County"; and
14 In all other places where the term "Superior Court appears
15 in Article V insert in lieu thereof the term "County Court".
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1 THE CHAIRMAN: Is the amendment seconded.

2 (Whereupon, the amendment was seconded.)

3 THE CHAIRMAN: The amendment is seconded by
4 Delegate Cardin. The Chair recognizes Delegate Carson
5 to speak in favor of the amendment.

6 DELEGATE CARSON: Mr. Chairman, ladies and gentle-
7 men, the amendment before you would have the sole effect
8 of changing the name of the Superior Court to that of
9 County Court throughout the Constitution.

10 It has no effect whatsoever upon the judicial
11 system and would not in any way affect anything else in
12 his article or any other article. It is not an amendment
13 in substance, but solely one of name and convention.

14 I do not like the words "Superior Court." I
15 think they have very little meaning. On the other hand,
16 the traditional Circuit Court now has no meaning because
17 there will be no circuits whatsoever, as I understand it,
18 at this level in the four-tier system, and therefore I
19 suggest and move that we substitute the name County
20 Court instead of Superior Court.

21 Now it may seem inconsistent to call it a

1 County Court in light of the fact that there will only
2 be one court throughout the state.

3 THE CHAIRMAN: Just a second, Delegate Carson.

4 Will the Committee of the Whole please come
5 to order and will delegates please take their seats?

6 You may proceed, Delegate Carson.

7 DELEGATE CARSON: It may seem possibly incon-
8 sistent to call this court, which will only be one court
9 existing at this tier throughout the state by the name
10 County Court, when there is only one court involved,
11 but on the other hand, I think the words "County Court"
12 have a meaning in other states and I think it would have
13 a clear meaning to the people of this state, that this is
14 the court in each county in which there will be a resident
15 judge and which will be sitting for the county, and I
16 think the jurisdiction and the venue of each county
17 relating to the division of the court at that level sit-
18 ting there makes this possibly a reasonable solution,
19 and therefore I suggest and move the words "County Court"
20 instead of "Superior Court".

21 THE CHAIRMAN: Does any delegate desire to speak

Nov 16

CONSTITUTIONAL CONVENTION OF MARYLAND

TO: ALL RECIPIENTS OF DAILY TRANSCRIPT
FROM: Robert J. Martineau, Secretary
DATE: December 1, 1967

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It has come to our attention that Page 3581 is missing from the daily transcript dated November 16, 1967. The error was a typographical mistake in page numbering only and does not affect the reading matter of the transcript.

Nov 16

1 in opposition?

2 Delegate Mudd?

3 DELEGATE MUDD: Mr. Chairman, I rise to speak
4 in opposition to the amendment.

5 The committee considered at some length the
6 names of the courts in the four-tier system. The name
7 "county" was proposed and considered at length as a
8 possible name for the fourth tier of courts, namely, the
9 District Court, but was disapproved by a majority of the
10 committee.

11 We respectfully suggest, as I believe our memo-
12 randum indicates to Delegate Carson, that the title of
13 Superior Court for the third tier, or Trial Court, is in
14 very general and popular use throughout the U. S. to desig-
15 nate the Trial Court in many jurisdictions.

16 We respectfully suggest, as Delegate Carson has
17 indicated, that to maintain, or retain the name "Circuit
18 Court" for the courts at this level would now be a misnomer
19 and confusing.

20 Accordingly, that name of "Circuit Court" was
21 abandoned by the committee and the title Superior Court

1 was substituted as being descriptive of the Superior Court
2 at that trial level, and also for the purpose of being
3 consistent with the trend of nomenclature throughout the
4 United States to designate Trial Court at this level.

5 We therefore feel that, although this may appear
6 to be a matter of some inconsequence, that consistent with
7 the majority recommendation it is desirable and effective,
8 we believe, to retain the name "Superior Court".

9 THE CHAIRMAN: Any other delegate desire to
10 speak in favor of the amendment?

11 Any other delegate desire to speak against the
12 amendment?

13 Delegate Schneider?

14 DELEGATE SCHNEIDER: Mr. President, I think
15 Delegate Carson brought up one of the many objections
16 to the amendment and that is that it is not a county
17 court. It is a state court. It is a state court for
18 and in that county and to call it County Court is a mis-
19 nomer, and I submit that if we start playing the name
20 game here on the floor, which we have already played in
21 the committee, and which the Commission played, we could

1 be here for days, with four tiers, and perhaps as many
2 as ten different names for each tier, and I would hope
3 that this would be unanimously rejected.

4 THE CHAIRMAN: Any other delegate desire to
5 speak in favor of the amendment?

6 Delegate Mason, do you desire to speak against
7 the amendment?

8 DELEGATE MASON: I rise to speak against this
9 this amendment. I do not particularly like the name
10 Superior Court, being a resident of Baltimore City, I like
11 even less the name of the County Court of Baltimore City.

12 THE CHAIRMAN: Any further discussion?

13 Are you ready for the question? The clerk will
14 sound the quorum bell.

15 THE CHAIRMAN: The question arises on the adop-
16 tion of Amendment No. 2. A vote Aye is a vote in favor
17 of the adoption of the amendment. A vote No is a vote
18 against. Cast your votes.

19 Has every delegate voted? Does any delegate
20 desire to change his vote?

21 The clerk will record the vote.

1 THE CHAIRMAN: There being nine votes in the
2 affirmative and 111 in the negative, the motion is lost.
3 The amendment fails.

4 Is there another amendment to Section 5.01?
5 Any other amendment to Section 5.01?

6 Delegate Needle?

7 DELEGATE NEEDLE: Mr. Chairman, I rise on a
8 point of personal privilege to ask this body to welcome
9 to the chambers today my wife and her mother. I would
10 like to say a word on behalf of all of our wives, those
11 who perhaps are the most abused as a result of this Con-
12 vention, and husbands too in those cases.

13 The wives unfortunately do not have the pleasure
14 and satisfaction of the great work of this Convention,
15 but suffer all of its inconvenience, along with the dele-
16 gates. Many husbands and wives do not return home until
17 weekends or ungodly hours in the evening, and the wives
18 have to prepare dinner at unusual times for those hus-
19 bands. Mine is very thoughtful and considerate.

20 I ask this body to express special accolade
21 to all wives and husbands as the case may be and form

1 itself at this time into a functional division, a family
2 court, and assist in the cause of marital harmony, wel-
3 coming my wife to this Convention.

4 (Applause.)

5 THE CHAIRMAN: Delegate Mentzer?

6 DELEGATE MENTZER: A personal privilege.

7 Also in the gallery this morning, there are 32
8 students from the Buckingham Elementary School in Bowie,
9 Prince Georges County, with their teacher, Mrs. Marino.
10 These boys and girls live a few blocks from my home and
11 it is always a pleasure to see their bright and shining
12 faces.

13 (Applause.)

14 THE CHAIRMAN: Any other amendments to Section
15 5.01? Any amendments to Section 5.02?

16 Delegate Storm.

17 DELEGATE STORM: If it is in order, Mr. Chairman,
18 I would like to move to strike the word "exclusively" --

19 THE CHAIRMAN: Has the amendment been printed?

20 DELEGATE STORM: I was going to ask that we use
21 the minority report amendment and just strike out

1 everything that does not pertain to this particular
2 amendment. I would just get rid of the word "exclusively",
3 which, as Mr. Case said, is implied anyhow.

4 THE CHAIRMAN: The rule requires that amendments
5 be printed. The Chair will be disposed to ask if there
6 is any objection to considering the amendment without it
7 being printed, with the assurance it will be printed and
8 be filed with the records of the Convention.

9 The suggestion is that Section 5.01 be amended
10 by striking the word "exclusively" in line 11. Is there
11 any objection to considering it without the printed amend-
12 ment being before you?

13 The Chair hears no objection.

14 Is there a second to the motion?

15 (Whereupon, the motion was seconded.)

16 THE CHAIRMAN: This will be considered as
17 Amendment No. 3.

18 Delegate Storm, will you please see that it is
19 printed, so that it is available for us later?

20 DELEGATE STORM: May I express my appreciation
21 for the gracious way you handled that?

1 THE CHAIRMAN: Express your appreciation to the
2 House.

3 Any one member could object and defeat you.

4 Delegate Storm, the Chair recognizes you to
5 speak to the amendment.

6 DELEGATE STORM: The only thing I wish to empha-
7 size is that this is, as Mr. Case said, clearly implied
8 in the language of the old Constitution as well as in
9 this, even though we leave it out, and excess verbiage,
10 especially when it has not been used in the Legislative
11 Branch, to say that the General Assembly has the exclusive
12 right to legislate, and we have not said it in the execu-
13 tive, that the governor has the exclusive right to be
14 the governor, it just kind of worries me and Mr. Case made
15 it very clear that this is implied anyhow.

16 When we set up a Judicial Branch, I would just
17 feel about this in the future if we did not make it so
18 exclusive.
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1 THE CHAIRMAN: The Chair recognizes Delegate
2 Mudd.

3 DELEGATE MUDD: Mr. Chairman, I hesitate to
4 oppose a distinguished friend who advances this amendment,
5 but frankly I don't see the point in the amendment. If
6 he has accepted Delegate Case's explanation, without
7 exclusive, it means exclusive, and probably because I am
8 a country lawyer from a small town, I just would prefer
9 to have in there what we mean, rather than leave it to be
10 implied possibly once in that direction by some
11 court and again not implied by another court. Therefore,
12 I respectfully oppose the amendment.

13 THE CHAIRMAN: Does any other delegate desire
14 to speak in favor of the amendment?

15 Does any other delegate desire to speak
16 in opposition to the amendment?

17 The Clerk will sound the quorum bell.

18 THE CHAIRMAN: The question arises on the
19 adoption of amendment 3. Amendment number 3 is to
20 strike the word "exclusively" in line 11, on page 1,
21 section 4.01. A vote Aye is a vote in favor of the amendment

1 to strike the word exclusively. A vote No is a vote
2 against the amendment.

3 Cast your votes.

4 Has every delegate voted? Does any delegate
5 desire to change his vote? The Clerk will record the
6 vote. There being 44 votes in the affirmative and 73
7 in the negative, the motion is lost. The amendment fails.

8 Is there any other amendment to section 5.01?

9 (There was no response.)

10 THE CHAIRMAN: Is there any amendment to sec-
11 tion 5.03?

12 (There was no response.)

13 THE CHAIRMAN: Is there any amendment to section
14 5.04?

15 (There was no response.)

16 THE CHAIRMAN: Is there any amendment to
17 section 5.05?

18 Delegate Singer.

19 DELEGATE SINGER: Excuse me, Mr. President.
20 There was an amendment to 5.03 being prepared. I don't
21 know whether it is ready yet.

1 THE CHAIRMAN: Has it been printed?

2 DELEGATE SINGER: I don't know that, sir.

3 THE CHAIRMAN: It has not yet been printed.

4 We will proceed and come back to section 5.03.

5 The Chair heard no amendment to section 5.05,
6 is that correct?

7 Section 5.06. There is an amendment proposed
8 by Delegate Bamberger, is that right

9 DELEGATE BAMBERGER: Yes, sir.

10 THE CHAIRMAN: The pages will please distribute
11 the amendment. This will be Amendment No. 4.

12 I am sorry. Since there is an amendment to
13 be offered to 5.03, please mark that Amendment No. 5.

14 The Clerk will read the amendment.

15 DELEGATE QUILLLEN: Amendment No. 5 to Committee
16 Recommendation No. JB-1, by Delegate Bamberger:

17 On page 2, section 5.06, titled "Composition of
18 Intermediate Appellate Court," In line 39 strike out the
19 words "as prescribed by rule,".

20 THE CHAIRMAN: Is the amendment seconded?

21 (Whereupon, the amendment was seconded.)

1 THE CHAIRMAN: The amendment having been
2 seconded, the Chair recognizes Delegate Bamberger to
3 speak for the amendment.

4 DELEGATE BAMBERGER: Section 5.06 authorizes the
5 General Assembly to establish the number of judges, not
6 less than five, five or more judges who will sit on the
7 intermediate appellate court, so then the General Assembly
8 may decide there may be six or eight or any number of judges
9 in excess of five.

10 The next section, 5.06, does not give the
11 General Assembly, but gives only the highest court,
12 the Court of Appeals, the power to say, we have six
13 judges there. They need not all six sit together in any
14 one case. The business of that court is such that they
15 ought to divide into panels, into panels, let's say, of
16 three, and the Constitution or the proposed section 5.06
17 does say that the panels, the divisions of the court,
18 should be not less than three.

19 The purpose of the amendment is to give also,
20 not exclusively, but to give also to the General Assembly
21 the right to say when it establishes the number of judges

1 that these judges shall sit in panels.

2 I am concerned that the General Assembly
3 would say, well, we think there ought to be nine
4 judges in order to take care of the business of the court,
5 but they will never take care of that business if all nine
6 sit together. They will take care of that business if
7 they can sit in panels of three; so that in effect you
8 really would have three courts, three panels of three
9 could be operating at any one time.

10 The amendment accomplishes this by striking out
11 those words on line 39 in section 5.06 which say, that
12 the court, the Court of Appeals, not even this court,
13 not the intermediate appellate court, but the highest
14 court can by its rule set up the panel, because then, as
15 I understand this, the committee's proposal, the last
16 section, which is section 531, would be operative in that
17 it says except as to matters specifically provided to be
18 taken care of by rule; then both the court, the Court of
19 Appeals and the General Assembly have the power to
20 establish or to make the rule to establish these panels.
21 I think the practical effect of that would be that the

1 legislature, having heard the testimony about the need for
2 judges, about the workload in that court, would, by law,
3 establish the number of judges and say that they shall sit
4 in three, four, two, whatever number of panels they
5 on the basis of testimony today here think should be
6 established; but if that isn't workable, if after the
7 court has operated for six months and finds that it
8 really doesn't need that many panels, or it needs more
9 panels, the court then by its rule could change the number
10 of panels established by the General Assembly.

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: Mr. Chairman, ladies and gentlemen
13 men of the Convention. I rise to oppose the amendment.

14 A provision in the recommendation submitted
15 to this Convention which requires that the intermediate
16 court may sit in divisions, as prescribed by rule, is consistent
17 with our overall concept of the efficient functioning
18 of courts within this four-tier system.

19 The majority report requires the chief judge
20 of the Court of Appeals to assume complete responsibility
21 before the administration of the courts; within the rule

1 making power, the courts may be administered within such
2 limitations and suggestions as the court in its wisdom
3 provides by rule.

4 There may be some apparent reason that the
5 legislature at the time it adds judges to this court may
6 have ideas as to how the divisions may sit or operate, which
7 might not subsequently appear to the court to be implemented
8 by rule. To me that is inconceivable.

9 Furthermore, the power of the legislature to
10 prescribe at the time it expanded the manpower of that
11 court as to how these divisions might operate could, I
12 respectfully suggest, interfere and disrupt the orderly
13 housekeeping, for want of a better word, of the overall
14 court concept, and of course, particularly at this expandable
15 court level of the intermediate appellate court, which this
16 majority report of the Judicial Committee contemplates
17 must be expanded to take care of an increasing caseload at
18 that level.

19 We therefore feel that adoption of this amendment
20 is inconsistent with the recommended procedures
21 in other jurisdictions, especially the appellate level, and

1 is inconsistent with the overall concept of the court
2 structure as contemplated and recommended by the Committee
3 on the Judicial Branch. And I shall therefore vote against
4 the amendment.

5 THE CHAIRMAN: Any other delegate desire to speak
6 in favor of the amendment?

7 Does any other delegate desire to speak in
8 opposition to the amendment?

9 The question arises on the adoption of amend-
10 ment --

11 Delegate Bamberger.

12 DELEGATE BAMBERGER: May I ask if the Chairman
13 would yield to a question?

14 THE CHAIRMAN: I am sorry. Delegate Mudd,
15 do you yield to a question?

16 DELEGATE MUDD: Yes, sir.

17 DELEGATE BAMBERGER: I understood your opposi-
18 tion to the amendment was premised on the fact that it
19 took away from the Court of Appeals the power to decide
20 how the Court of Intermediate Appeals shall sit. Does it
21 do that?

1 DELEGATE MUDD: It could, if the action
2 of the General Assembly was the last expression of opinion
3 as to how the court should sit.

4 THE CHAIRMAN: Delegate Bamberger.

5 DELEGATE BAMBERGER: May I speak to the amend-
6 ment?

7 THE CHAIRMAN: You may, sir.

8 DELEGATE BAMBERGER: It does not take away the
9 power of the power of the Court of Appeals to decide
10 the panels in which the Court of Special Appeals shall sit.
11 It takes it away as long as it would take the Court of
12 Appeals to meet after the legislature had done something.

13 I want to make it clear that I don't intend to
14 take that power away from the court. I just think that the
15 legislature, when it is going to be asked to establish the
16 number of judges in a court, ought to be able to say
17 something about whether they all sit together or whether
18 they sit in panels.

19 I don't think the legislature should be the
20 only body that decides that. I think the court ought to
21 have something to do with its own housekeeping. I just

1 don't think it ought to be exclusive.

2 THE CHAIRMAN: Does any other delegate desire
3 to speak in opposition?

4 Delegate Henderson.

5 DELEGATE HENDERSON: I would like to say that
6 perhaps Mr. Bamberger is not aware of the present form
7 of section 5.31, I believe it is, the rule making power,
8 which differs from the Convention draft. It is now left
9 to concurrent power so that the last one who speaks on the
10 subject would have the final say. That could lead to an
11 endless chain, of course, but it is hoped that this would be
12 able to be worked out; but the situation, if the legislature
13 should prescribe the panels, I think it would be in the
14 first place a rather delicate matter for the Court of
15 Appeals to tell them no, and if they did tell them no, the
16 legislature would have the option of changing it back
17 and putting in the panels.

18 Now, in a field which is so primarily a matter
19 of judicial administration and convenience, it seems to
20 me that we should trust the rules of the Court of Appeals
21 and its rule making power to do this sort of thing.

1 Mr. Bamberger is also a member of the Rules Committee and
2 he knows with what diligence that body operates and how
3 representative it is of the sentiments throughout the State.
4 I hope that the amendment will not prevail.

5 THE CHAIRMAN: Is there any other person,
6 delegate, that desires to speak to the amendment?

7 Delegate Johnson.

8 DELEGATE JOHNSON: May I speak in favor of
9 the amendment in this way -- and it is really an answer to
10 the statement, and perhaps in contradiction to the state-
11 ment made by Delegate Henderson.

12 Rule 5.31, whereas it does in fact provide
13 that there will be concurrent rule making power between the
14 legislature and the court, by virtue of its first phrase,
15 where it states, "except as to matters specifically provided
16 by this Constitution to be prescribed by rule," that
17 phrase means that wherever the term "rule" is used in
18 the Constitution and specifically in Article V, it is
19 exclusively in the power, it is exclusively rule making
20 power in the court. Therefore, Delegate Bamberger's
21 argument, and his amendment, is well taken.

1 THE CHAIRMAN: Does any delegate desire to
2 speak in opposition?

3 Delegate Dukes.

4 DELEGATE DUKES: I rise to speak in opposition
5 to the amendment. There seems to be some inference that
6 there might be a direct relation between multiples of
7 three on the bench and being able to sit in three man panels.
8 I should think it would be immediately obvious that
9 five judges could use a three-man panel system equally as
10 well as six or seven or eight judges. It means that on those
11 days when only three judges are sitting the other two
12 judges could be clearing up decisions; or on a day when
13 one or two judges might be absent, sick, you could go ahead
14 with the docket.

15 They do not need to make panels out of six or
16 nine to augment the three man panel. You could
17 have one or two judges that would give you a multiple number
18 of different possibilities of panels, and, of course, in
19 those days when you aren't using the full number of judges
20 those judges are clearing up opinions and generally a case-
21 load.

1 I don't think that we need to consider anything
2 other than who is best able to determine on which days and
3 in what way a three man panel could be used. It seems
4 clear to me that the court itself is in the best position
5 to make that judgment.

6 THE CHAIRMAN: Does any other delegate desire
7 to speak in favor?

8 DELEGATE GLEASON: Mr. Chairman.

9 THE CHAIRMAN: Delegate Gleason.

10 DELEGATE GLEASON: Mr. Chairman, I would hope
11 that the delegates would start getting a little concerned
12 with the concentration of power in the judiciary, and I
13 urge upon them a careful consideration of this amendment.

14 I don't think that any of these provisions in
15 this article can be taken by itself, and we have to consider
16 where this article fits in the overall context of the
17 Committee's recommendations. One of their recommendations,
18 of course, is that these judges shall sit for ten years, there
19 will be no political opposition and contest, there will be
20 a screening process. To that extent we have kind of
21 removed the political check of these appointments.

1 We don't tell the executive branch that they can
2 do anything they want; we don't tell the Governor that
3 he can set up his executive department, put them into
4 effect, and that is it. We say that he can only do this
5 pursuant to law passed by the General Assembly.

6 Take the legislative branch: We don't say
7 that anything that they want to put into a law will become
8 law. We say that proposal of the General Assembly must be
9 subject to veto of the Governor.

10 Here we really are taking a halfway measure,
11 saying that the Court of Appeals shall have power, but
12 that power shall be shared also by the legislative branch.
13 I would submit to Judge Henderson that it is much easier
14 to get such men to go into a room to overturn a decision
15 of 160 or 180 members of the General Assembly than it
16 is to get that group to go and overturn a rule of the
17 Court of Appeals.

18 I think we have got to be concerned about over-
19 loading power in one branch of the government. I would
20 hope this amendment would be approved by this group.

21 THE CHAIRMAN: Does any delegate desire to

1 speak in opposition to the amendment?

2 Delegate Willoner, do you desire to speak in
3 favor of the amendment?

4 DELEGATE WILLONER: Yes, Mr. Chairman.
5 I really didn't think this was the time to speak on
6 this question, but Delegate Dukes is trying to make it a
7 question of judicial administration. I don't think it is
8 a question of judicial administration. Certainly, it is
9 unlikely that the legislature would ever get into this
10 area. The principle that is involved here, to me, is the
11 most serious principle. It is a question every delegate
12 is going to have to reach before this discussion of this
13 issue is over, that is, whether or not we are going to
14 delegate the legislative power to the courts.

15 To me this is a very very serious proposition.
16 While our present Constitution has concurrently delegated
17 this power, in this particular article we are delegating
18 power far beyond what is ordinarily considered an appro-
19 priate delegation of power to a judicial branch. It seems
20 to me that a stand must be taken here, although it would
21 be more likely to be taken at the last article when we

1 get to the rule making power, that the court shall not
2 have power that cannot be checked by the very people who
3 are giving them that power; and what we would be doing
4 is delegating forever the power of the people to have any
5 say in the administration of their courts.

6 While, as I say, this is unlikely to happen
7 in this particular area, if they were ever to want this
8 power, I can think of the general principle that we should
9 delegate when we have to pay, or we give the power to
10 judge our lives, we pay them to have the courtrooms to do
11 do it in, the salary to do it, and we have absolutely
12 nothing to say about it. This is a horrible principle.
13 I think it is a principle. I think it is a principle
14 that we have to stand up and be counted on. It is unfor-
15 tunate it comes on an issue which is really not a question
16 that the legislature will really get into. It is the
17 principle that is involved.

18 I think we should support this amendment.

19 THE CHAIRMAN: Delegate Marvin Smith, do you
20 desire to speak in opposition?

21 DELEGATE M. SMITH: I desire to speak in

1 opposition to the amendment, yes, sir.

2 THE CHAIRMAN: You may proceed.

3 DELEGATE M. SMITH: May I suggest to you, Mr.
4 Chairman, that what we are really and truly talking about
5 here is letting the courts administer the courts. Now,
6 the power does reside in the people. The power resides
7 in the people, and if that power of administration is
8 abused, the people have the power to amend this constitution.

9 I submit to you, sir, that the people who have
10 here responsibility with reference to this rule making
11 power overlook the procedures that have heretofore been
12 used insofar as that rule making power is concerned.

13 Now, you, Mr. Chairman, I think have been a
14 member of the Rules Committee. I have never been a member
15 of the Rules Committee of the Court of Appeals, but you
16 know, sir, that the practice has been, when the Rules
17 Committee was considering a rule, a draft of a rule, that
18 it was published in the daily record; it was circulated.
19 The bar and the public have been given an opportunity to be
20 heard, and then it is only after that that the rule has gone
21 to the court and has been adopted by the Court of Appeals.

1 THE CHAIRMAN: Any other delegate desire to
2 speak in favor?

3 Delegate Weidemeyer.

4 DELEGATE WEIDEMEYER: Mr. President, Members
5 of the Committee:

6 I rise in favor of the amendment.

7 If we look at section 531, we find, as
8 Delegate Henderson pointed out, that both the legislature
9 and the court have a concurrent jurisdiction in rule
10 making power, and that the last one to speak on the
11 subject is the rule to be applied; but also in
12 section 5.31, it begins "except as to matters specifically
13 provided by this Constitution."

14 Now, if you leave these words, as prescribed
15 by rule, in, then you are not complying with the intent of
16 5.31, and that is to give concurrent power; and you are
17 vesting it wholly in the court, rather than giving the
18 concurrent rule making power to both the court and the
19 legislature.

20 I would think that if we take it out and the
21 court rules on it, then we are operating under the rule.

1 But if the court operates without that and makes the rule,
2 and the legislature finds it inadequate or erroneous, or
3 thinks it ought to be changed to benefit the people, they
4 will be free to do it. But if you leave the words "as
5 prescribed by rule," then that rule making power is ex-
6 clusively in the court, and forever removed from the
7 people.

8 I think the amendment is a very good amendment,
9 and I am heartily in favor of it.

10 THE CHAIRMAN: Does any delegate desire to
11 speak in opposition?

12 Delegate Rosenstock.

13 DELEGATE ROSENSTOCK: Mr. Chairman, fellow
14 Delegates:

15 We are facing here a challenge to the judicial
16 system that we as delegates have the opportunity to present
17 to the people of Maryland. We all know that the business
18 of the court is increasing, not arithmetically but geo-
19 metrically. If the court is to perform the functions
20 that we expect of it in the future, the court must be able
21 to handle its own business. If the court should act

1 corruptly, the legislature has the right of impeachment.
2 We must have confidence in our courts, and the only way to
3 dispense justice to the people of Maryland is to allow
4 the court to run its own business for that purpose.

5 THE CHAIRMAN: The Chair recognizes Delegate
6 Bard to speak in favor of the amendment.

7 DELEGATE BARD: Mr. Chairman, I would like
8 to speak in favor of the amendment.

9 I have long felt that a prescription of rule
10 fundamentally involves the procedural step. Thus as I
11 see it, this particular step is a substantive matter.
12 The nature of panels is substantive, as I would see it,
13 and is inherently tied in with the whole nature of what
14 is discussed here.

15 I don't think we ought to set each last --
16 my second point -- I don't believe we ought to set each
17 last step in this debate in terms of what is happening
18 to the courts. I for one believe that the steps that we
19 are taking are highly important, but this particular
20 item, as I see it, is one where we ought to have concur-
21 rent powers; and because it is substantive, I believe

1 that they both ought to share in this concurrent responsi-
2 bility.

3 THE CHAIRMAN: The Chair recognizes Delegate
4 Carson to speak in opposition to the amendment.

5 DELEGATE CARSON: I do not rise in opposition.
6 I would like to ask a question, if it is pertinent now, of
7 Chairman Mudd.

8 THE CHAIRMAN: If persons desire to speak,
9 I would have to give them preference. I will come back
10 to you.

11 Delegate Key, do you desire to speak in opposi-
12 tion?

13 DELEGATE KEY: I would like to ask Delegate
14 Bamberger a question, if I may.

15 THE CHAIRMAN: Does anyone desire to speak in
16 opposition?

17 (There was no response.)

18 THE CHAIRMAN: Delegate Bamberger, do you
19 yield to a question from Delegate Key?

20 DELEGATE BAMBERGER: Yes, sir.

21 THE CHAIRMAN: Delegate Key.

1 DELEGATE KEY: Delegate Bamberger, not having
2 the advantage of being a lawyer, I don't have such intimate
3 knowledge of the courts, and I just wonder if perhaps the
4 words, "as prescribed by law" in 5.06 do not really give
5 the legislature the upper hand, because they are the ones
6 who have to delegate the judges that are requested by the
7 court, and therefore would examine the use of the judges
8 and could say if they are being adequately used.

9 THE CHAIRMAN: Delegate Bamberger.

10 DELEGATE BAMBERGER: As I understand section
11 5.06, and if I misstate I hope Chairman Mudd will respond,
12 the words "as prescribed by law" in sections 37 and 38
13 relate only to the number of the judges who are members
14 of that court, but not to the numbers of judges who would
15 sit at any one time in a panel to hear an individual case.

16 THE CHAIRMAN: Delegate Bamberger, I am not sure
17 that you understood Delegate Key's question, or at least
18 the Chair understood it. If I could state it, I think she
19 was agreeing with your interpretation of the first
20 sentence by saying that inasmuch as the legislature can
21 control the number of judges and decide whether to allow

1 additional judges, would they not be able to say in effect,
2 no, to the court, if it didn't sit in the proper division?

3 Is that essentially your question, Delegate Key?

4 DELEGATE KEY: Yes.

5 THE CHAIRMAN: Delegate Bamberger.

6 DELEGATE BAMBERGER: I guess the answer
7 to that is yes, the legislature could, as a matter of
8 corridor bargaining with the courts say do not increase
9 the number to nine, unless you pledge by rule that you
10 will have them sit in particular places.

11 Does that answer suggest that I understand your
12 question?

13 THE CHAIRMAN: I think so.

14 Does Delegate Mudd yield to a question from
15 Delegate Carson?

16 DELEGATE MUDD: Yes.

17 THE CHAIRMAN: Delegate Carson.

18 DELEGATE CARSON: Chairman Mudd, I understand
19 under 5.31 that both the Court of Appeals by Rule and the
20 General Assembly by law shall have concurrent power to pre-
21 scribe regulations concerning practice and procedure in

1 all courts, as well as certain other matters; is that cor-
2 rect, sir?

3 DELEGATE MUDD: Yes, sir.

4 DELEGATE CARSON: Would you consider it to be
5 one of the matters which would be within the realm of
6 practice and procedure, the length of an appellate brief
7 to be filed in either of the appellate courts?

8 THE CHAIRMAN: Delegate Mudd.

9 DELEGATE MUDD: The length of appellate brief?

10 DELEGATE CARSON: Yes.

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: Would that be a matter
13 that might be provided by rule?

14 THE CHAIRMAN: Delegate Carson.

15 DELEGATE CARSON: I am asking whether the
16 length of an appellate brief would fall within the defini-
17 tion of a regulation governing practice and procedure in
18 all courts.

19 THE CHAIRMAN: Delegate Mudd.

20 DELEGATE MUDD: In my view, yes.

21 THE CHAIRMAN: Delegate Carson.

1 DELEGATE CARSON: Then, Chairman Mudd, if I under-
2 stand you correctly, the General Assembly will have the
3 right to say what the length of a brief shall be that
4 will be filed in the appellate courts, is that correct?

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: The General Assembly would
7 have the right.

8 THE CHAIRMAN: Delegate Carson, the Chair is
9 at a complete loss to understand the connection between
10 your questions and this amendment. Would you care
11 to explain?

12 DELEGATE CARSON: What I am getting at there
13 is this:

14 Is it not so under your position that both
15 the General Assembly and the court by rule would have
16 concurrent ability to decide the length of an appellate
17 brief, but that the General Assembly would have no right
18 to decide what divisions any intermediate appellate court
19 judge would sit in.

20 THE CHAIRMAN: Delegate Mudd.

21 DELEGATE MUDD: I concur in that interpretation.

1 THE CHAIRMAN: Any further discussion?
2 Are you ready for the question? Delegate Ad-
3 kins.

4 DELEGATE ADKINS: I simply would like to ask
5 a further clarifying question of the chairman of the
6 committee.

7 THE CHAIRMAN: Delegate Mudd, do you yield
8 to the question?

9 DELEGATE MUDD: Gladly.

10 THE CHIARMAN: Delegate Adkins.

11 DELEGATE ADKINS: Is it quite clear in the
12 opinion of the committee that the question of the number
13 of judges which a litigant is entitled to have hear his
14 case is in fact a matter of practice and procedure, and not
15 a matter of substance?

16 THE CHAIRMAN: Delegate Mudd.

17 DELEGATE MUDD: Your question is that a liti-
18 gant --

19 THE CHAIRMAN: Delegate Adkins.

20 DELEGATE ADKINS: Is it quite clear that the
21 question of the number of judges that sit in a panel

1 is a matter of procedure, and not in fact a matter of
2 substance? The implication of the question being that if
3 it should be determined to be a matter of substance, then
4 if the amendment is adopted the rule making power would
5 not apply, and it can then only be decided by the General
6 Assembly.

7 My question is, is it quite clear to the committee
8 that this is a matter of practice and procedure, and not
9 a matter of substance?

10 THE CHAIRMAN: Delegate Mudd.

11 DELEGATE MUDD: That would be my interpretation;
12 it is practice and procedure, not a matter of substance.

13 DELEGATE DELLA: Mr. Chairman.

14 THE CHAIRMAN: Delegate Della.

15 DELEGATE DELLA: Will Delegate Mudd yield
16 to a question?

17 DELEGATE MUDD: Yes.

18 DELEGATE DELLA: When the Court of Appeals was
19 increased from five to seven, didn't the legislature state
20 how many judges shall hear a particular case?

21 THE CHAIRMAN: Delegate Mudd.

1 DELEGATE MUDD: I think so, yes.

2 THE CHAIRMAN: Delegate Della.

3 DELEGATE DELLA: When the intermediate court
4 was created, did the legislature say how many judges shall
5 form a panel?

6 THE CHAIRMAN: Could you indicate more clearly
7 by the legislature saying so? Do you mean by Constitu-
8 tional amendment?

9 DELEGATE DELLA: By statute.

10 THE CHAIRMAN: I am not sure Delegate Mudd
11 understood your prior question. Would you restate
12 your first question?

13 DELEGATE DELLA: When the Court of Appeals was
14 increased from five to seven, didn't the legislature say
15 that there shall be four judges to hear a case?

16 DELEGATE MUDD: My recollection, Delegate Della,
17 is that it is in the Constitution.

18 THE CHAIRMAN: Delegate Della.

19 DELEGATE DELLA: Didn't the legislature in
20 that Constitutional amendment place in that Constitution
21 that four judges shall hear a case?

1 THE CHAIRMAN: Delegate Mudd.

2 DELEGATE MUDD: That is in the Constitution.

3 THE CHAIRMAN: Delegate Della.

4 DELEGATE DELLA: That is right, and the legis-
5 lature took it upon themselves to put that figure in the
6 amendment.

7 THE CHAIRMAN: Delegate Mudd.

8 DELEGATE MUDD: Well, do you mean by the
9 legislature, by the drafting of the Constitutional amend-
10 ment that was adopted?

11 DELEGATE DELLA: That is right.

12 DELEGATE MUDD: Probably so, but it is a
13 Constitutional amendment. It is not prescribed by law.

14 THE CHAIRMAN: Delegate Della.

15 DELEGATE DELLA: If they had that pwer then,
16 was that abused?

17 THE CHAIRMAN: Delegate Mudd.

18 DELEGATE MUDD: Certainly not in my view.

19 THE CHAIRMAN: Delegate Della.

20 DELEGATE DELLA: Could it be abused today if
21 this amendment is adopted?

1 THE CHAIRMAN: Delegate Mudd.

2 DELEGATE MUDD: The distinction I get, Dele-
3 gate Della, is that the Constitutional amendment proposed,
4 with language suggested by the legislature, perhaps, was
5 adopted with that language in it.

6 It was not a secondary thought or subsequent
7 amendment by the legislature. It was part of the Constitu-
8 tional amendment creating the court, and not by action of
9 the legislature, except in initiating the Constitutional
10 amendment.

11 THE CHAIRMAN: Is there any further discussion?
12 Are you ready for the question?

13 The question arises on the adoption of Amendment
14 No. 5 with respect to section 5.06. A vote Aye is a vote
15 in favor of the adoption of the amendment; a vote No, a
16 vote against.

17 Has every delegate voted?

18 Does any delegate desire to change his vote?
19 The Clerk will record the vote.

20 There being five votes in the affirmative and
21 44 in the negative, the motion is carried.

1 The amendment is adopted.

2 I understand that the amendment proposed by
3 Delegate Singer is now printed and available, but rather
4 than take that up at the present time, I think we can do
5 so after the luncheon recess. The Chair recognizes
6 Delegate Powers.

7 DELEGATE POWERS: Mr. Chairman, I move the
8 Committee of the Whole rise and report.

9 THE CHAIRMAN: Is there a second?

10 (Whereupon, the motion was seconded.)

11 THE CHAIRMAN: All in favor, signify by saying
12 Aye; contrary, No.

13 The Ayes have it. The motion is carried.

14 (The mace was replaced by the Sergeant at Arms.)

15 (Whereupon, at 12:29 p.m. the Committee of the
16 Whole rose, and the Convention reconvened.)

17 THE PRESIDENT: The Convention will please come
18 to order.

19 On behalf of the Committee of the Whole the
20 Chair reports that the Committee of the Whole had under
21 consideration Committee Recommendation JB-1, still has

1 it under consideration, and desires to sit again. The
2 Chair recognizes Delegate Powers.

3 DELEGATE POWERS: Mr. President, I move we
4 recess until 2:00 o'clock.

5 THE PRESIDENT: Is there a second?

6 Just a second. The Chair recognizes Delegate
7 Bennett.

8 DELEGATE BENNETT: I would like to note my
9 presence.

10 THE PRESIDENT: Before we take the vote on the
11 adjournment, all delegates not present at roll call de-
12 siring to indicate their presence do so now on the roll
13 call board.

14 The Clerk will record the supplementary roll
15 call.

16 The Chair recognizes Delegate Gallagher.

17 DELEGATE GALLAGHER: Mr. Chairman, Ladies and
18 Gentlemen of the Committee:

19 The Committee on the Legislative Branch will
20 meet for its lunch and a continued meeting right after
21 this recess. Please bring your lunch into the committee

1 room. We would like to meet throughout the lunch period
2 today.

3 THE PRESIDENT: Delegate Boyer.

4 DELEGATE BOYER: Mr. President, your Committee
5 on General Provisions will also have a working luncheon.
6 After consultation with the Honorable Chairman of
7 the Personal Rights Committee, there are several and very
8 important matters that I should bring to the attention of the
9 General Provisions Committee. These are very major matters
10 that we must consider, and I seriously urge everyone to
11 attend.

12 THE CHAIRMAN: Delegate Frederick, did you de-
13 sire to be recognized?

14 (There was no response.)

15 THE PRESIDENT: Any other announcements?

16 All in favor of the motion to recess until 2:00
17 signify by saying Aye; contrary, No. The Ayes have it.
18 It is so ordered.

19 (Whereupon, at 12:31 p.m., the Convention
20 recessed, to reconvene at 2:00 p.m. of the same day.)
21

A F T E R N O O N S E S S I O N

November 16, 1967 - 2 p.m.

THE PRESIDENT: The Sergeant at Arms will
clear the aisles and close the doors.

The Convention will please come to order.

The Chair recognizes Delegate Harkness.

DELEGATE HARKNESS: Mr. President, I am indeed
pleased to announce that we have with us in the gallery,
immediately to the rear of the rostrum, 29 students, seniors
from the Calvert County High School, accompanied by their
teacher, Mrs. Marguerite Gettier, and her sister, Mrs.
Phelps, to observe the session today.

THE PRESIDENT: Delighted to have them.

(Applause.)

DELEGATE MITCHELL: Mr. Chairman.

THE PRESIDENT: Delegate Mitchell.

DELEGATE MITCHELL: Mr. President, I would like
to welcome in behalf of the Convention Dr. Lilly M.
Jackson, President of the Baltimore Branch of the
N.A.A.C.P., who happens to be my mother, and 35 years

1 ago, when Senator Beall was a member of the legislature,
2 started the effort to repeal the intrastate Jim Crow
3 Laws; Dr. Jackson.

4 THE PRESIDENT: Delighted to have you.
5 (Applause.)

6 THE PRESIDENT: Delegate E.T. Miller.

7 DELEGATE E. T. MILLER: May I report my
8 presence? I was late for roll call.

9 THE PRESIDENT: Delighted to have you here
10 also. Roll call.

11 (Whereupon, a roll call was taken.)

12 THE PRESIDENT: Has every delegate answered
13 roll call?

14 The Clerk will record the roll call.

15 Are there any other announcements?

16 The Chair recognizes Delegate Powers.

17 DELEGATE POWERS: Mr. President, I move the
18 Convention resolve itself into the Committee of the Whole
19 for the purpose of resuming consideration of Committee
20 Recommendation JB1.

21 THE PRESIDENT: Second?

1 (The motion was duly seconded.)

2 THE PRESIDENT: All in favor, signify by saying
3 Aye; contrary, No. The Ayes have it. So ordered.

4 (Whereupon, at 2:06 p.m. the Convention
5 resolved itself into the Committee of the Whole.)

6 (The mace was removed by the Sergeant at Arms.)

7 THE CHAIRMAN: The Committee of the Whole will
8 please come to order.

9 Prior to recess we were about to consider an
10 amendment to Section 5.03. This was an amendment we
11 passed over earlier. It will be Amendment No. 4. 5 was
12 the last one but we passed 4. This is Amendment No. 4.
13 The Clerk will read the amendment.

14 MR. QUILLEN: Amendment No. 4 to Committee
15 Recommendation No. JB1 by Delegates Storm and Singer.
16 On Page 2, Section 5.03 Composition of Court of Appeals
17 in Line 4 after the word "of" add the words "no fewer
18 than."

19 THE CHAIRMAN: Is the amendment seconded?

20 (Whereupon, the amendment was duly seconded.)

21 THE CHAIRMAN: The Chair recognizes Delegate

1 Singer to speak to the amendment.

2 DELEGATE SINGER: Mr. Chairman, ladies and
3 gentlemen of the Convention, this amendment is designed
4 for the sole purpose of eliminating the number of
5 judges to sit on the Court of Appeals; that it be fixed
6 in the Constitution and allowing further constitutionality
7 should the need arise to increase the number of judges to
8 six.

9 The Constitution of 1867 provides for eight
10 judges on the Court of Appeals, with four constituting
11 a quorum. This was changed in 1944 to a total number of
12 five judges on the Court of Appeals, of which three
13 constituted a quorum. This was again changed in 1960 to
14 provide for an increase in the number of judges to seven,
15 with five being a quorum, the present system under which
16 we operate.

17 It is obvious from the committee draft that
18 the intermediate Court of Appeals is conceived to be
19 expanded or have its jurisdiction expanded so as to in
20 the future, with the increasing case load on the court,
21 take part of that burden away from the Court of Appeals.

1 It is our intention by this amendment to
2 increase the flexibility so that if need should arise
3 beyond that time that additional judge if additional
4 judge or judges are needed on the Court of Appeals that
5 a constitutional amendment will not be necessary; also
6 under the committee recommendation, the functions and
7 duties of the Chief Judge of the Court of Appeals will be
8 such as to curtail severely the time which he will be
9 allowed to actually participate in the areas of the
10 Court of Appeals and decision-making process, so that we
11 essentially have six full time judges on the Court of
12 Appeals should the committee recommendation be adopted.

13 It is for this reason, and the flexibility which
14 it would provide, that the amendment is submitted and here
15 for your support.

16 THE CHAIRMAN: Any delegate desire to speak in
17 opposition? Delegate Mudd?

18 DELEGATE MUDD: Mr. Chairman, ladies and
19 gentlemen of the committee, I rise to speak in opposition
20 to the amendment. The facts cited by Delegate Singer in
21 support of his amendment regarding the change in the size

1 of the Court of Appeals all occurred prior to the creation
2 of the Special Court of Appeals, now to be known as the
3 intermediate Court of Appeals.

4 Our research in committee convinces us that the
5 Court of Appeals is intended as a court of last resort to
6 sit as a single court and not in panel.

7 Seven seems to be the ideal number, based on
8 statistics available from all other states in the union.
9 Only five states of the fifty have more than seven judges
10 on their Court of Appeals or Court of Last Resort, and in
11 those five states, the number is nine. 80 per cent of the
12 States in the Union have from five to seven judges on
13 the Court of Appeals, or the Court of Last Resort.

14 If this highest court in Maryland is to func-
15 tion as we propose by our majority recommendation as the
16 Court of Last Resort in the State, and retain its appellate
17 powers, with the limit to original jurisdiction as pre-
18 scribed in the Constitution, it is the considered
19 judgment of the committee that it can best function as a
20 seven-man court, and without any increase in the number of
21 judges. We therefore oppose the amendment.

1 THE CHAIRMAN: Any delegate desire to speak
2 in favor of the amendment? Delegate Storm?

3 DELEGATE STORM: I realize that with the new
4 intervening court and the flexibility that that has that
5 there is a chance that the court will be able to handle
6 the appellate cases without an imposition on the
7 highest court, but those gentlemen at the present time,
8 I think, are among the hardest working people in the State,
9 and as Maryland grows, and as we have heard in the last
10 few days, how our population will explode continuously,
11 especially as some of the smaller counties strive for
12 better representation, and emphasize not having birth
13 control, there will be so many people go into the courts,
14 and I am afraid that if we have one Court of Appeals to
15 be the ultimate body, there may come a time in the future
16 when, to keep these judges from being overworked, they
17 should add a few more. I will admit that the amendments
18 made to this article in the past, in my lifetime, came
19 before the intermediate court was established but if this
20 Constitution is going to serve this state for so many
21 years in the future, then unless the authority of the

1 Court of Appeals is going to be dilluted and most of the
2 cases decided in the intermediate court, and I expect
3 this to a certain degree, still I believe that the Court
4 of Appeals should have the right to go to the Legislature
5 without a constitutional amendment and say we need a couple
6 of more, because right now I think they have been over-
7 worked, so I am just pleading for fair labor practices
8 for the appellate court. Thank you.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Henderson to speak in opposition to the amendment.

11 DELEGATE HENDERSON: Mr. Chairman, fellow
12 delegates, I might almost say that I am arising on a
13 point of personal privilege because I did have the
14 privilege of sitting on the eight-judge court prior to
15 1944, on the five-judge court, the seven and the six and
16 again on the seven-judge court before my retirement.

17 I want to say, without any qualification, that
18 I regard a seven-judge court as the maximum number of
19 judges that can properly confer and lay down the law for
20 the state. It seems to me anything more than that you
21 get into the workings of Parkinson's law, and the work

1 increases in proportion to the number of judges. You
2 either do that, the additional time that is taken in
3 conferring, or you go to a panel system, in which the one
4 hand doesn't know what the other hand is doing, and it is
5 a very unsatisfactory system.

6 Now on the other hand, the panel system in the
7 intermediate court is quite workable and quite acceptable
8 because you have the stop-gap there, the saving clause,
9 that the cases can be reviewed on certiorari, so if there
10 is any difference between the two panels, that difference
11 can be straightened out.

12 You also have the additional safeguard that
13 the intermediate court can grant re-arguments in cases
14 where they find that there is really some vital difference
15 between them, but to simply add to the numbers on the
16 highest court, I submit would be a great mistake and
17 would weaken instead of strengthen our judicial system
18 in Maryland.

19 I hope that the amendment will not prevail.

20 THE CHAIRMAN: Does any other delegate desire
21 to speak in favor of the amendment? Delegate Chabot.

1 DELEGATE CHABOT: May I ask a question of the
2 maker, of either maker of the amendment?

3 THE CHAIRMAN: Delegate Singer, do you yield
4 to a question?

5 DELEGATE SINGER: Yes, Mr. Chairman.

6 THE CHAIRMAN: Delegate Chabot.

7 DELEGATE CHABOT: The effect of your amendment
8 if adopted would seem to be that the legislature could add
9 two judges so that the court consists of nine members and
10 yet the concurrence of only four, which is less than a
11 majority of the whole number, would be sufficient to
12 decide a case. Was this intended?

13 THE CHAIRMAN: Delegate Singer.

14 DELEGATE SINGER: No, this was not intended.
15 We did not wish to include in the provision such things
16 as how many judges would have to confer in a decision;
17 we thought this was more probably handled by rule and
18 that the court itself would work out such a detail as
19 that. Although I would classify it as a detail, it is
20 nonetheless an essential one.

21 DELEGATE STORM: Mr. Chairman.

1 THE CHAIRMAN: Just a second, Delegate Storm.
2 Does any other delegate desire to speak in opposition?
3 Delegate Adkins.

4 DELEGATE ADKINS: Mr. Chairman, I think this is
5 a very dangerous amendment. Unless the size of the Court
6 of Appeals is established by the Constitution, it is left
7 open for the potential manipulation of future
8 legislatures as to decisions which that court may make
9 and lest you think this is a change made completely out of
10 the air, I can only refer you to the recent history of
11 the attempt to pack the Supreme Court of the United States,
12 which was, of course, thoroughly and finally defeated.

13 I think it would be unfortunate to leave the
14 Court of Appeals in a position where in the event of an
15 unpopular adverse decision by that court, the size of the
16 court could be changed by legislative enactment and thus
17 affect what could be crucial, major political and current
18 problems of the day.

19 I don't suggest that that is intended by the
20 amendment. I do suggest it is a potential effect of the
21 amendment.

1 We are entitled to stability in the decisions
2 of our highest court; be they right or be they wrong, we
3 at least need them to be stable. Lawyers will realize
4 that they don't always get this, but at least this is
5 one thing that we do need.

6 If the size of the court is subject to
7 fluctuation without the final consent of the people by
8 constitutional amendment, I suggest that we will have lost
9 this value.

10 I would urge the amendment's defeat.

11 THE CHAIRMAN: The Chair recognizes Delegate
12 Storm to speak to the amendment.

13 DELEGATE STORM: I rise, Mr. Chairman, to
14 answer Delegate Chabot's question, with a different
15 answer than my co-sponsor.

16 THE CHAIRMAN: You may speak on the amendment
17 any way you choose.

18 DELEGATE STORM: I did intend that only four
19 out of five judges could continue to decide cases,
20 even though there might be nine or even ten members of
21 the Court of Appeals. Please note that we did not change

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3 the number of a quorum.

4 I will admit that this would enable the court
5 if it wanted to sit in panels, but I have enough
6 faith in the court to know that they would not so panelize
7 themselves as to lose a cohesive and general policy, so
8 this was simply a labor-saving device, and I see no
9 manipulation, because even regardless of how many judges
10 are members, the chief judge will be able to assign five
11 as a quorum, and I do not think he would go over that
12 unless he became a manipulator. and I do not believe that
13 the chief judge would be a manipulator in the bad sense
14 of the word as suggested, so I submit to you that leaving
15 the five judges as a quorum and four as required to concur
16 in an opinion, this would accomplish exactly what we mean
17 it to, and nothing else, and that is to have the Court of
18 Appeals not overworked.

19 THE CHAIRMAN: Any other delegate desire to speak
20 in opposition? Delegate Beall.

21 DELEGATE BEALL: Mr. Chairman, I rise to ask
Delegate Henderson a question.

THE CHAIRMAN: Does Delegate Henderson yield to

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a question?

DELEGATE HENDERSON: Yes.

THE CHAIRMAN: Delegate Beall.

DELEGATE BEALL. If he understood you, Hudge Henderson, that you were a member of the court when it was eight.

DELEGATE HENDERSON: Yes.

DELEGATE BEALL: I remember very vividly when there used to be five. As a matter of fact, it came down. You recommended a reduction of five. The entire court recommended a reduction to five. Then later it increased to seven. Why was that?

DELEGATE HENDERSON: The reason it reached seven, I think it had rather a long history.

The Bar Association Plan, which was proposed by a number of others, including President Eney, was defeated, and as a substitute for it that was to set up an intermediate court of a somewhat different type from the present one; but at any rate, as a substitute the Bar Association in a commission that was headed, I believe, by Delegate Case, recommended that it be enlarged to

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3 seven and given the criminal jurisdiction, and that was
4 put through by constitutional amendment.

5 Then subsequently that proved to be inadequate
6 to keep up with the load so they introduced the intermediate
7 court, which is given the criminal jurisdiction. We now
8 have the opportunity to enlarge the intermediate court,
9 rather than to enlarge the upper court, which I think is
a very satisfactory working arrangement.

10 THE CHAIRMAN: Delegate Beall.

11 DELEGATE BEALL: Then as I understand it, you
12 would rather, or you want to have the court stay as it is
13 at seven, court of appeals, and increase, if necessary,
14 the intermediate court?

15 DELEGATE HENDERSON: That is it exactly.

16 DELEGATE BEALL: Thank you.

17 THE CHAIRMAN: Any further discussion?

18 Are you ready for the question?

19 The question arises on the adoption of Amendment
20 No. 4. A vote Aye is a vote in favor of the amendment.
A vote No is a vote against.

21 Cast your votes.

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3 Has every delegate voted?

4 Does any delegate desire to change his vote?

5 The Clerk will record the vote.

6 There being 10 votes in the affirmative, and 117
7 in the negative the motion is lost and the amendment is
8 rejected.

9 We now revert to Section 506. Were there any
10 further amendments to Section 506?

11 The Chair hears none.

12 Are there any amendments to Section 507?

13 The Chair hears none.

14 We have a number of amendments to Section 5.08.

15 There are apparently four amendments to this sec-
16 tion of which the Chair has knowledge. Some of them
17 go to the same point, others to a different point.

18 The Chair will try to put them in such an order
19 that you will have an opportunity to consider all.

20 Will the pages please distribute the
21 amendment marked AQ by Delegate MacDonald? This will be
Amendment No. 6.

The Clerk will read the amendment.

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3 MR. QUILLEN: Amendment No. 6 to Committee
4 Recommendation No. JB-1 by Delegate MacDonald.
5 On page 3 Section 5.08 Composition of Superior Court line
6 14 after the word "by" insert the words "law or."

7 THE CHAIRMAN: Is there a second to the
8 amendment?

9 DELEGATE GLEASON: Second the amendment.

10 THE CHAIRMAN: The Chair recognizes Delegate
11 MacDonald to speak to the amendment.

12 DELEGATE MACDONALD: Mr. Chairman, this amendment --
13 well, let me preface my remarks first by stating that
14 although I am offering an amendment to this section, I am
15 very much in favor of the committee's report as a whole.
16 I think the committee's report is excellent. It will be
17 a great improvement in our judicial system and I too want
18 to compliment the committee on a job well done.

19 This amendment, Mr. Chairman, to Section 508 would
20 allow the General Assembly to establish functional divisions
21 of the Superior Court, as well as the Court of Appeals by
rule.

In other words, it would make the power concurrent.

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3 I voted against the proposed amendment of the
4 minority of Section 501, and I am very happy that the four-
5 tier court system is being maintained and that that will
6 be, or those will be the courts exclusively. I think
7 it would be very bad if we had authority in the General
8 Assembly or anywhere else to create other courts outside
9 of this four-tier system.

10 If I may call the attention of the delegates
11 to Section 507, Section 507 does grant to the General
12 Assembly the authority to prescribe the jurisdiction of the
13 superior court. It can by law under this section add
14 to the jurisdiction of the superior court.

15 The authority under Section 5.08 to establish
16 functional divisions I submit is of the same nature.
17 Indeed, it is probably more limited, but of the same
18 nature.

19 I think the General Assembly should be in the
20 position to give the Court of Appeals a nudge in this
21 connection.

If I may call your attention to Section to
5.31, it would provide for concurrent rule-making power.

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3 The court of appeals can make rules establishing
4 procedure and governing the administration of the courts,
5 and the General Assembly would be able to do likewise.

6 We have had this concurrent rule-making power
7 here in Maryland now for some years. To my knowledge,
8 to my limited knowledge, it has worked remarkably well.
9 On the few occasions where there has been some sort of
10 conflict, I understand that the General Assembly and the
11 Court of Appeals have worked it out to everyone's mutual
12 satisfaction.

13 So, Mr. Chairman, and member delegates, I think
14 in this matter of establishing functional divisions of the
15 superior court, it is similar to granting jurisdiction
16 to the court, and I think that the General Assembly should
17 be in a position to give the court of appeals a nudge, if
18 that should ever be necessary.

19 THE CHAIRMAN: The Chair recognizes Delegate
20 Mudd.

21 DELEGATE MUDD: Mr. Chairman, ladies and gentlemen
of the Convention, I rise again to oppose this amendment.

If my memory serves me correctly, this addition to

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3 Section 508, as well as the corresponding addition to
4 Section 5.10, providing for the functional division to
5 be created by rule was one of the ideas of our committee that
6 was adopted almost unanimously.

7 We gave careful consideration in this area
8 to the administrative responsibilities of the court to
9 work within the areas of the jurisdiction prescribed by
10 the legislature.

11 It seemed to us, as I recollect discussion in
12 the committee, and the comments of my very capable ladies
13 and gentlemen of the committee, that it was almost the
14 unanimous feeling of the committee that in this area of
15 functional division the court and not the legislature should
16 have the authority to create these divisions.

17 The functional division in our judgment was
18 the answer to the earlier criticism of the committee
19 recommendation, that we needed to give the legislature power
20 to create additional courts.

21 We fear, frankly, that the legislature, not
now perhaps, but sometime in the foreseeable future,
unintentionally, by law to create a functional division;

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3 that because of its lack of knowledge of the details
4 of the innermost functioning of the courts in the various
5 areas, areas of the state, could disrupt the harmony and
6 efficiency of the entire structure.

7 We feel that the amendment here proposed
8 opens the door to such a possibility, if not a probability
9 and we feel that our committee would have done less than
10 a complete job if it had not restricted this very important
11 power within the court where we think it probably belongs
12 if the court is to be required, as we are insisting, to
13 administer justice in the state of Maryland for all the
14 people to the best of its ability.

15 Such a concurrent priority in the legislature
16 could, we respectfully suggest brings about a situation
17 where apparent lack of uniformity of jurisdiction, some
18 inability to assign the judicial manpower, could seriously
19 disrupt the orderly and efficient administration of
20 justice in the state.

21 THE CHAIRMAN: You have a quarter of a minute,
22 Delegate Mudd.

23 DELEGATE MUDD: Therefore, we respectfully urge

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3 your rejection of this amendment.

4 THE CHAIRMAN: Any other delegate desire to speak
5 in favor of the amendment?

6 DELEGATE BARD: I have a question, Mr. Chairman.
7 Is it in order?

8 THE CHAIRMAN: To whom is your question?

9 DELEGATE BARD: Delegate MacDonald.

10 THE CHAIRMAN: The delegate desires to speak.
11 He will be recognized first.

12 Delegate Mason, do you desire to speak to the
13 amendment?

14 DELEGATE MASON: No. I have a question to Delegate
15 MacDonald.

16 THE CHAIRMAN: Delegate MacDonald, will you yield
17 to a question from Delegate Bard?

18 DELEGATE MACDONALD: Yes.

19 THE CHAIRMAN: Delegate Bard.

20 DELEGATE BARD: Delegate MacDonald, would your
21 motion preclude the fact that the change you recommend
for 5.08 would also necessitate a change in 5.10,
on line 41?

1 DELEGATE MACDONALD: I did not hear everything
2 you said.

3 THE CHAIRMAN: Delegate Bard.

4 DELEGATE BARD: Delegate MacDonald, would it not
5 be true that the change which you recommend for 5.08 would
6 also need to be made by your logic in 5.10, line 41?

7 THE CHAIRMAN: Delegate MacDonald.

8 DELEGATE MACDONALD: Yes, and I intend to introduce
9 a similar amendment to Section 5.10.

10 THE CHAIRMAN: Delegate MacDonald, do you yield
11 to a further question from Delegate Mason?

12 DELEGATE MACDONALD: I do.

13 THE CHAIRMAN: Delegate Mason.

14 DELEGATE MASON: Delegate MacDonald, could the
15 legislature establish a functional division in the
16 superior court of one county as opposed to establishing
17 this in all counties?

18 DELEGATE MACDONALD: As I interpret the
19 committee's report, and if this is incorrect, I would like
20 to have Delegate Mudd correct me, that if the court already
21 had jurisdiction over the subject matter, it could create
a functional division in one or more counties to take care

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3 of that matter, over which it already has jurisdiction.
4 For example, assume that the superior court already has
5 jurisdiction over divorce cases. It could in one or more
6 counties establish, in my opinion, a functional division
7 so that one judge was assigned to those divorce cases in that
8 county.

9 If it is a matter over which the court does not
10 at the present time have jurisdiction, then it would
11 be necessary to grant the jurisdiction to the court and
12 that grant of course would be state-wide.

13 I understand that to be required by Section 5.07.
14 And then in such counties where the bulk, or where the work
15 was so heavy that it would be necessary, or desirable, rather
16 to have a particular judge sitting on those cases, you
17 could establish that functional division.

18 THE CHAIRMAN: Any other delegate desire to
19 speak in opposition to the amendment? Delegate Dukes?

20 DELEGATE DUKES: May I ask a question of Delegate
21 Mudd?

THE CHAIRMAN: Of Delegate Mudd?

DELEGATE DUKES: Yes, sir.

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3 THE CHAIRMAN: Does Delegate Mudd yield to a
4 question?

5 DELEGATE MUDD: Yes, Mr. Chairman.

6 THE CHAIRMAN: Delegate Dukes.

7 DELEGATE DUKES: Delegate Mudd, I, like Mr.
8 MacDonald, am strongly in favor of the uniform four-tier
9 system. If the language in Section 5.08 and also 5.10, which
10 we aren't discussing, functional divisions of superior court
11 may be established in any county as prescribed what it
12 means, if it means what I think it does I am satisfied.
13 Did you hear Delegate Case this morning in his explanation
of what he thought the legislature could do?

14 DELEGATE MUDD: Yes, sir.

15 DELEGATE DUKES: Would that agree with your
16 committee's position?

17 DELEGATE MUDD: Yes, sir.

18 DELEGATE DUKES: The other question, as I
19 understood your answer to my questions yesterday afternoon
20 and last night, it would mean that a functional division
21 could not be established within a particular court,
superior court, which would have separate rules other than

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3 the rest of the court of which would have a different
4 area of jurisdiction.

5 Now, my particular question is, is there any
6 reason why the court of appeals could establish a rule
7 which says that the superior court can have, if it has
8 divorce jurisdiction, a family court and establish separate
9 rule for that family division, different from the regular
10 rules of the Superior Court?

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: You mean as to practice and
13 procedure?

14 DELEGATE DUKES: Yes.

15 DELEGATE MUDD: Well, of course --

16 THE CHAIRMAN: Delegate Mudd.

17 DELEGATE MUDD: The answer to that question is
18 probably what interpretation would be put on the rules as
19 to whether or not it interfered with the uniformity
20 of jurisdiction, but I see no problem with a functional
21 division of the superior court dealing with several phases
before one judge or one functional division within the
jurisdiction assigned by law to that superior court.

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3 such as a family court could deal with divorce matters
4 or support, anything within the equity jurisdiction of
5 the court.

6 THE CHAIRMAN: Delegate Dukes, if you would
7 pardon the Chair I think I could ask Delegate Mudd if
8 he might clarify that answer.

9 Delegate Mudd, do the Court of Appeals rules
10 of procedure today provide differently in law cases than
11 inequity cases, that is, in law courts and in equity
12 courts?

13 DELEGATE MUDD: Yes, in some instances. Therefore,
14 there could be different rules.

15 THE CHAIRMAN: Within a functional division in
16 the court?

17 DELEGATE MUDD: Yes.

18 THE CHAIRMAN: Does any delegate desire to speak
19 in favor?

20 DELEGATE WILLONER: Mr. Chairman, I rise again
21 as I did a few minutes ago, to not attack the detail of
what will be the right of the court to provide for
establishment of functional divisions by rule, but to

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2 attack the principle that is again involved here. As
3 was just explained by Mr. Mudd, we could have set up by
4 the court of appeals a separate function. It would
5 be exclusively within the jurisdiction of the court to
6 establish the rules for it.

7 It seems to me once again we have to make a
8 judgment whether we feel that this power can be Given
9 to the courts without any veto, without any check whatsoever,
10 and in answer to my remarks earlier the only answer was
11 that, well, we can impeach the judges and that they notify
the public when they discuss these rule changes.

12 It seems to me that the much more effective
13 way is the way that we handle the legislature, it gets
14 far more publicity than the rules meetings. The effect
of the veto is a far more reasonable use.

15 I do not believe we have ever impeached a
16 Maryland judge. The point I am making is this: That we must
17 once again make the judgment whether or not we want to dele-
18 gate without any check whatsoever this legislative power,
19 this power to make law without any check whatsoever and I
20 feel that that is a great departure in the principle of
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2 of government which we have discussed here so far.

3 THE CHAIRMAN: Any delegate desire to speak in
4 opposition?

5 Delegate Marion?

6 DELEGATE MARION: Mr. Chairman, for those who
7 would say that this is the granting of some unusual
8 power to the courts, I say they are mistaken. This is
9 not a question so much of power but one of responsibility
in connection with administration of the courts.

10 I think that the language which we have tried
11 to include relating to functional divisions, both
12 in this section and in Section 5.10, relate far more to the
13 assignment of judges to handle particular matters
14 within a larger jurisdiction than to questions of power.
15 It is one of administration of the courts and of assignment
16 of judges. We try later on to give the authority
17 to assign judges appropriately throughout this entire
18 judicial system, and I think that the creation of the
functional divisions by rule is not inconsistent with it.

19 We have tried to strike a balance in the
20 committee between those things which do relate to substantial
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3 power, which are given under the language, which are
4 given under the language; they are prescribed by law.
5 In the first 11 sections, if my count is correct,
6 prescribed and provided by law is included 11 times, and
7 the provision of prescription by rule is only six, and
8 after our action this morning has now been reduced to five.

9 I do not think that is an unhappy balance, and
10 would urge that this amendment be defeated.

11 THE CHAIRMAN: Any other delegate desire to
12 speak in favor?

13 Delegate Raley?

14 DELEGATE RALEY: Mr. Chairman, as I look at this,
15 it seems to me that, and if this amendment, if this passes
16 as it now stands in the committee report, forever more no
17 one but the court system itself could ever make provisions
18 for any type of new courts, no matter what the needs
19 might be, to meet the needs of our people.

20 Now, I think this article is excellent,
21 but I do not think either that only the judiciary has a
corner on all new and creative ideas, and I might
say this, and I say it maybe reluctantly, but our judiciary

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2 in this state has not blazed any new trails, as I have
3 seen it, and it looks to me, it seems to me fundamental
4 that somehow people's representatives should have the
5 ability and the power to bring some new and creative ideas
6 into the judicial system of this state in the future.

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Henderson to speak in opposition to the amendment.

9 DELEGATE HENDERSON: Mr. Chairman, fellow delegates,
10 I think it is unfortunate that this argument seems to take
11 a turn as if something depended--or we were trying to
12 give some unknown or some extreme power to the courts.

13 I for one am very much in favor, and have always
14 welcomed and have played a part for the last 25 years in the
15 arrangements between the Rules Committee and the Court of
16 Appeals, on one side or the other, and our relationships
17 with the legislature have always been very happy ones.

18 In some cases the court has yielded, in others
19 the legislature has yielded.

20 The most recent example, which is even now going
21 on, is a joint meeting of the subcommittee of the
Rules Committee, working out with the Legislative Council

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2 matters involving the whole subject of bail, for example,
3 trying to separate the substantive from the procedural
4 and strike a common ground, and I have no fears at all
5 that at least in the procedural field there will be any
6 major disagreements.

7 The Rules Committee and the Court of Appeals has
8 always been willing to yield to the legislature's sugges-
9 tions in matters of policy or in matters which affect
10 substance.

11 The legislature, on the other hand, has left
12 procedural matters almost exclusively to the Court of
13 Appeals. That is the way it should be.

14 Now, here we are dealing with something, however,
15 which involves the best use of judicial manpower, I take it.
16 The question is whether for example in Baltimore City
17 we should recognize the distinction which is made there
18 between criminal and civil cases in the district courts.
19 They are handled separately.

20 In the law courts there is a difference between
21 law and equity. There are various other functional Divisions
which exist and which will undoubtedly be continued, but

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3 to say that the legislature can tell the court how best
4 to handle the jurisdiction which the legislature confers
5 on the court seems to me to be a wide departure from both
6 sound practice and the present practice.

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Weidemeyer to speak in favor of the amendment.

9 DELEGATE WEIDEMEYER: Mr. President, members
10 of the Convention, again I rise to favor this type of
11 amendmetn. I imagine whether we adopt the amendment or
12 not, as a practical matter, the court will immediately make
13 the necessary rules and arrangements, but to freeze it
14 into the constitution, and that is the way it will always
15 be, whether it suits the public or not, would be making a
16 very, very big mistake, and I just picked up an article
17 here in the paper where members of the Bar in Montgomery
18 County were making a complaint to the bench about
19 functional matters up there.

20 I would imagine that that court would heed
21 the wishes of the members of the Bar, and make such correc-
tions in its function as will please and give service
to the public of that area, but on the other hand, if the

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3 court did not do it, I would want the power in the
4 legislature to lay down some law to correct the situation,
5 so that the voice of the people in the final analysis could
6 be heard, and therefore, Mr. President and members of the
7 Convention, I think this is a wise amendment and should be
8 adopted.

9 THE CHAIRMAN: Any other delegate desire to
10 speak in opposition to the amendment?

11 Delegate Dulany?

12 DELEGATE DULANY: Mr. Chairman, in answer to the
13 point raised a while ago that there was no control on the
14 power of the courts in this area, I think we have forgotten
15 for a moment that the legislature actually sets the
16 jurisdiction of all these courts. The legislature can
17 amend or withdraw the jurisdiction of one court or the
18 other, and when we are speaking of functional divisions,
19 what we are speaking of are perhaps a probate division
20 or a criminal division or maybe a juvenile division.
21 We are not speaking of the administrative agencies or
courts like the Public Service Commission, Workmen's
Compensation, or even the Tax Court.

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2 I think in all these areas the legislature will
3 still reserve power, and has the power in any statutory
4 court. In the administration of the district court or
5 the superior court, and in various divisions in the counties
6 that have a lot of judicial activity, the court should
7 retain jurisdiction to set its own policy on setting up
8 separate divisions and I would oppose the amendment.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Johnson to speak to the amendment.

11 DELEGATE JOHNSON: Mr. Chairman, I should like to
12 speak to the amendment in this way: I deem it necessary
13 and important by way of explanation to Delegate MacDonald
14 because I feel that in all probability this motion had
15 something to do with the question that he asked me when
16 I was giving the minority report.

17 It is my recollection that I introduced an
18 amendment to Section 5.08 that said, functional divisions
19 of the superior court may be established in any county
20 as prescribed by rule or by law.

21 I did this in committee and I believe that
it -- I know what happened. Immediately after that

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2 another motion was made to amend, to delete, by law,
3 and I believe the amendment to the amendment carried by
4 something like 10 to 8, and then the entire section was
5 adopted.

6 We did not make this a matter for the minority
7 report because the minority feels and believes that in all
8 probability the court will create functional divisions
9 where they are needed. However, since every witness,
10 every member of the judiciary, every member of the legis-
11 lature and every member of the Rules Committee who appeared
12 before our committee urged that we retain concurrent juris-
13 diction, I do not think that it is harmful, and it may even
14 be helpful, provided that this should be accomplished
15 by rule or by law.

16 I believe that the courts will do it by rule.
17 However, since we are writing a document for many, many
18 years to come, hopefully, perhaps there will come a time
19 when the courts will not be quite attuned to the needs
20 of the various divisions, particularly the court of appeals.
21 Perhaps they will not fully appreciate or understand the
need for a functional division in some far-off county.
For that reason, and for the reasons that I have indicated
when questioned by Delegate MacDonald, I will support

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2 his amendment.

3 THE CHAIRMAN: Any other delegate desire to speak
4 in opposition? Delegate Marvin Smith?

5 DELEGATE M. SMITH: Mr. Chairman, if there is some
6 need in a far-off county, it is not going to have a
7 voice in the General Assembly anymore, that is for certain.

8 Mr. Chairman, I am reminded on this of the
9 situation that happened in Baltimore City about 30 years
10 ago.

11 I started out when I was in law school in the
12 Office of the Baltimore Criminal Justice Commission
13 and I can recall very well walking in with Mr. Wallace
14 Reed, into Southern Police Station, and one of the people
15 there said, "Wally, what in the world did they create
16 these second-lieutenants, for, what used to be desk
17 sergeants," and Mr. Reed said, "Well, now, all I can tell
18 you is that the General Assembly in its wisdom saw fit
19 to do it."

20 Now, Mr. Chairman, what we are here talking
21 about is functional divisions. We are not talking about
the jurisdiction of the court. We are not talking

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2 about the creation of new courts. We are talking about
3 how the court can best handle its own business, and I
4 submit to you, sir, that the judiciary of the state is
5 going to be much better qualified to know just what its
6 problems are in the matter of judicial administration.
7 That is all we are talking about, in the matter of judicial
8 administration.

9 THE CHAIRMAN: Any other delegate desire to
10 speak in favor of the amendment?

11 Delegate Chabot.

12 DELEGATE CHABOT: Just as there are often times
13 when it is difficult to tell whether something is purely
14 a question of law or a question of fact, I suggest that
15 the matter that many of us are concerned with in this
16 amendment is neither purely a question of substance nor
17 purely a question of housekeeping. It partakes of both,
18 and it has significant elements of substance in it.

19 I suggest that it is more than a matter of house-
20 keeping as to whether or not there will be a small claims
21 court. It is a matter of the people's needs, not simply
the best utilization of judicial manpower.

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3 I suggest that it ought to be up to the
4 legislature to be able to decide that even if it means
5 inefficient use of judicial manpower, if there is a need
6 for the people in a given area for a small claims part
7 of the superior court or a district court, the legislature
8 ought to have at least a little bit of a safety valve to be
9 able to require it.

10 I suggest that the same situation obtains
11 at times with regard to judges who are specialized in
12 certain areas of the law. Sometimes it may be simply
13 a question of the most expeditious disposition of cases;
14 sometimes as in many family law areas or other technical
15 matters it may have to do with the entire philosophy
16 of the way cases in that area are disposed of.

17 I suggest that it ought to be within the power
18 of the legislature to be able to say to the appropriate
19 court, we feel that it is important as a substantive
20 matter that there be separate judges to handle family
21 type cases.

For this reason, in order to permit this safety
valve to be available, I would vote for the amendment.

1 THE CHAIRMAN: Delegate James.

2 DELEGATE JAMES: A point of inquiry. I would
3 like to ask the Chairman whether this would permit the
4 maintenance of the separate court system by law, if this
5 amendment is adopted, in Baltimore City. In other words,
6 would the adoption of this amendment simply provide a
7 means by which you could perpetuate the division of courts
8 in Baltimore City?

9 THE CHAIRMAN: Delegate Mudd, will you respond
10 to the question?

11 DELEGATE MUDD: Yes, Delegate James.

12 It was our thought from the beginning that this
13 functional division would be the means by which the present
14 division at the court of limited jurisdiction in Baltimore
15 City could be perpetuated, namely by the municipal court
16 and peoples court. Likewise, perhaps the juvenile court
17 as it now exists in Montgomery County would be another
18 case.

19 THE CHAIRMAN: I take it Delegate James was
20 referring more particularly to the six courts constituting
21 the supreme bench. Is this correct, Delegate James?

1 DELEGATE JAMES: That is correct.

2 DELEGATE MUDD: I see no difficulty in carrying
3 it through at the superior court level in the same regard,
4 depending upon the volume and extent of the business.

5 THE CHAIRMAN: Delegate Case, do you rise to
6 speak in opposition or in favor?

7 DELEGATE CASE: I rise to ask the Chairman to
8 yield for a question, if he will.

9 THE CHAIRMAN: Delegate Mudd, will you yield
10 for a question?

11 DELEGATE MUDD: Yes.

12 THE CHAIRMAN: Delegate Case.

13 DELEGATE CASE: Delegate Mudd, this sentence
14 was added to the Commission draft.

15 DELEGATE MUDD: Yes.

16 DELEGATE CASE: If the sentence ~~were~~ eliminated,
17 would that be equivalent to the amendment that is now
18 being proposed?

19 DELEGATE MUDD: Yes, I think exactly. If what
20 the committee added was eliminated and the section was
21 identical with what the draft Constitution recommended,

1 I think it would be the same.

2 THE CHAIRMAN: Does any delegate desire to
3 speak in favor of the amendment?

4 Delegate Pullen.

5 DELEGATE PULLEN: I would like to ask a
6 question, sir.

7 THE CHAIRMAN: Of whom?

8 DELEGATE PULLEN: Judge Mudd.

9 THE CHAIRMAN: Does any delegate desire to
10 speak in favor of the amendment, first?

11 Delegate Beatrice Miller.

12 DELEGATE B. MILLER: Mr. Chairman, previously
13 when we were discussing section 4.01, we were told that
14 the protection for a family or some other such type court
15 as the people would request or would like to have
16 was in this particular area. Now we are told that this
17 is a matter of judicial manpower.

18 I don't think that this is a matter of judicial
19 manpower only. I do think that there might be some time
20 in the future when the people would prefer to have a dis-
21 tinct type of court on a functional division, if you will,

1 that would answer their needs, and I don't see how under
2 the system that we are now setting up that we would
3 have any recourse, any place at all to indicate that need.

4 I remind the Assembly that the other day we
5 voted on referenda to protect the rights of the people in
6 cases where members of the legislature are before them every
7 four years for a vote, but in the cases where we appoint
8 judges for a long time, there does not seem to be any pro-
9 tection written in for the kinds of wishes that the people
10 might have in this area.

11 THE CHAIRMAN: Does any other delegate desire
12 to speak in opposition to the amendment?

13 Delegate Bushong.

14 DELEGATE BUSHONG: I would like to ask Delegate
15 Mudd a question.

16 DELEGATE MUDD: Yes, I will yield.

17 THE CHAIRMAN: Delegate Bushong, if a person
18 desires to speak he will have priority.

19 DELEGATE BUSHONG: I would first like to ask
20 him a question.

21 THE CHAIRMAN: Delegate Sherbow.

1 DELEGATE SHERBOW: I rise to speak in opposi-
2 tion to the amendment, and remind this assembly that in
3 Baltimore City, when the Supreme Bench determined that there
4 should be a functional division so that we could have a
5 special juvenile division, long before it existed any-
6 where else by order of the court, this was done. When the
7 supreme bench, by its own studies and with outside aid
8 decided the time had come when youths between 18 and
9 26 should have a special court geared to the problems aris-
10 ing from the crimes that they committed, the Supreme
11 Bench by order so provided.

12 Likewise, in the lower court, when a series of
13 housing cases developed into a situation where it was
14 necessary that magistrates, or as we now have them,
15 judges of the municipal court, be specially assigned so that
16 these cases be given priority and could be heard, this was
17 done by the courts.

18 This is peculiarly not a matter of manpower, but
19 a matter of providing justice at the time justice should be
20 served; as for example, this past summer, when it became
21 necessary to have not one, two, or three criminal courts

1 in Baltimore City, but five.

2 This is a matter that should rest with the
3 judges who are attuned to the times, aware of what is
4 needed, and by rule may provide for the best disposition,
5 not of the manpower, but of the cases that come before the
6 courts.

7 THE CHAIRMAN: Does any other delegate desire
8 to speak in favor of the amendment?

9 DELEGATE BENNETT: Mr. Chairman.

10 THE CHAIRMAN: Delegate Bennett, do you desire
11 to speak in favor of the amendment?

12 DELEGATE BENNETT: If I may be permitted to say
13 so, I wish that I had the confidence that Judge Sherbow
14 has in the willingness of the courts to reform themselves.
15 I don't know so much about what goes in in the Courts of
16 Maryland with regard to reforming themselves, and adopting
17 new and creative ideas, but I do know that in the federal
18 system we have had a great deal of difficulty in getting
19 the courts to recognize the need, for instance, for
20 redistricting themselves, a great deal of difficulty in
21 getting them to determine under what rules the appellate

1 court should grant a bench hearing, a great deal of other
2 difficulties relating to assignments of judges from one
3 district to another,

4 I have great respect for all of our courts
5 but it seems to me it is most desirable to have some sort
6 of appeal, some sort of appeal above the judges. We are
7 creating a system here where we have a chief judge as
8 powerful or more powerful than the Governor of this State
9 is going to be, and it seems to me that a little concession
10 to the public by way of granting them an appeal is well
11 worth the attention of this Convention.

12 THE CHAIRMAN: Delegate L. Taylor, do you de-
13 sire to speak in opposition to the amendment?

14 DELEGATE L. TAYLOR: I wanted to ask a question
15 of Chairman Mudd.

16 THE CHAIRMAN: We will have to defer that.

17 Delegate Mudd, will you yield to a question from
18 Delegate Pullen?

19 DELEGATE MUDD: Yes, sir.

20 THE CHAIRMAN: Delegate Pullen, will you state
21 your question?

1 DELEGATE PULLEN: Thank you, Mr. Chairman.
2 I don't know whether to apologize or congratulate my
3 mistake in calling you, sir, but in any case you are ob-
4 serving.

5 I am quite serious about this question. Lawyers
6 seem to know what they are talking about, but I am not sure
7 that I do. Is the purpose of this amendment to keep the
8 control of this under the legislature or to give the
9 legislature the right to judge the judges?

10 THE CHAIRMAN: Delegate Mudd.

11 DELEGATE MUDD: Probably the proponent of the
12 amendment can answer that, but I would guess it is both.

13 THE CHAIRMAN: Delegate Pullen.

14 DELEGATE PULLEN: Does not the legislature
15 already have the right of control, if the courts were to
16 decide to set up functional divisions, in that they have
17 got to go to the legislature to get the money, and by law
18 they have to be set up by the legislature, et cetera?
19 I think they have got to control, but now it seems to me
20 the real question here is do you want the legislature to
21 push the courts into performing this particular service?

1 THE CHAIRMAN: Delegate Mudd.

2 DELEGATE MUDD: I don't believe I exactly fol-
3 low your question, Doctor, but the legislature will pre-
4 scribe the jurisdiction for the courts in all four tiers.
5 Now, if the power to create functional divisions is as
6 the majority proposes, to be established by a rule, then the
7 courts, through the judges, would establish the functional
8 divisions.

9 If this amendment is added, then the legis-
10 lature would have power by law to create functional divi-
11 sions, as I understand it.

12 THE CHAIRMAN: One more question, Delegate
13 Pullen.

14 DELEGATE PULLEN: But it says, the number
15 shall be established by law.

16 THE CHAIRMAN: Delegate Mudd.

17 DELEGATE MUDD: The number of judges.

18 DELEGATE PULLEN: Yes.

19 THE CHAIRMAN: Delegate Pullen.

20 DELEGATE PULLEN: If the legislature can
21 determine the number and if the courts wish to have

1 divisions they have got to have more judges. Therefore,
2 the legislature will have to provide for them. I am not
3 concerned right now with the rightness or wrongness. I
4 want to know what I am voting for.

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: I suggest that you have made
7 a proper analysis of it, that by controlling the number
8 of judges the court cannot create a functional division
9 if the judicial manpower is not available through the
10 legislature.

11 THE CHAIRMAN: Delegate Mudd, do you yield
12 to a question from Delegate Bushong?

13 DELEGATE MUDD: Yes.

14 THE CHAIRMAN: Delegate Bushong.

15 DELEGATE BUSHONG: Delegate Mudd, in these
16 large counties where you have six and eight judges and
17 they don't get along together, what power is there in this
18 Constitution? Suppose one of them is appointed by the
19 chief judge of that circuit or superior court, and he
20 doesn't wish to take the assignment that he gives him?
21 What is there in this whole article that can be done about

1 that?

2 THE CHAIRMAN: Delegate Bushong, I am not sure
3 that the Chair understands the relevance of that
4 question to this particular amendment. Are you addressing
5 it to this particular amendment?

6 DELEGATE BUSHONG: Yes, Your Honor, because
7 you are taking power away from the legislature.

8 THE CHAIRMAN: Delegate Mudd.

9 DELEGATE MUDD: The best answer I can give you,
10 Delegate Bushong, is that the power of the judges to
11 assign judges temporarily is probably the best vehicle I
12 know of proposed in this recommendation, which is not in
13 this particular section, to deal with that problem if it
14 exists -- and I am not saying it does exist.

15 THE CHAIRMAN: Delegate Mudd, do you yield
16 to one more question from Delegate L. Taylor?

17 DELEGATE MUDD: Yes, Mr. Chairman.

18 THE CHAIRMAN: Delegate L. Taylor.

19 DELEGATE L. TAYLOR: Mr. Mudd, in Balitmore
20 City we have the Towson Court and we also have the
21 housing and rent court.

1 Under the definition of functional, say, for
2 instance, if the district court was created in Baltimore
3 City, would the assignment of the housing cases pertaining
4 to tenants and the assignment of cases pertaining to rent
5 matters, would they be assigned, say, under a functional
6 matter, under the functional system to one particular
7 court?

8 I am trying to get the meaning of functional.

9 THE CHAIRMAN: Delegate Taylor, could the Chair
10 restate your question?

11 DELEGATE L. TAYLOR: Yes.

12 THE CHAIRMAN: Delegate Mudd, the Chair believes
13 that Delegate Taylor is asking you whether if this provision
14 recommended by the commission, or by the committee, were
15 in the Constitution, would the court or someone else have
16 the authority to create in the district court functioning
17 in Baltimore City a rent court, or a similar division?

18 Is that your question, Delegate Taylor?

19 DELEGATE L. TAYLOR: I am trying to find out,
20 the Court of Appeals, could they create this by themselves?

21 THE CHAIRMAN: Could the Court of Appeals

1 create a rent court division of the district court in
2 Baltimore City? Is that your question?

3 DELEGATE L. TAYLOR: Yes, sir.

4 THE CHAIRMAN: Delegate Mudd.

5 DELEGATE MUDD: The answer to that question
6 is yes, as a functional division of the court, the
7 district or superior to which the jurisdiction in that
8 area was so assigned could do so.

9 THE CHAIRMAN: Delegate Taylor.

10 DELEGATE L. TAYLOR: That would combine
11 the rent matters along with the problems of tenants,
12 sanitary problems of tenants within the same court,
13 or could they make a distinction and assign them to another
14 division of the district court?

15 THE CHAIRMAN: Delegate Mudd.

16 DELEGATE MUDD: If all of those requirements
17 were within the jurisdiction of that particular course,
18 say the District Court, then a functional division of the
19 District Court could be created to handle all those
20 problems you have mentioned.

21 THE CHAIRMAN: Delegate Taylor.

1 DELEGATE L. TAYLOR: In other words, this is
2 a functional matter. It is not a legislative matter.

3 THE CHAIRMAN: Delegate Mudd.

4 DELEGATE MUDD: We think so, completely.

5 THE CHAIRMAN: The Chair recognizes Delegate
6 Willoner to speak in favor of the amendment.

7 DELEGATE WILLONER: Mr. Chairman, I just wanted
8 to answer some comments made by Judge Sherbow. I agree
9 with everything he has said. There is nothing in this
10 amendment that would foreclose what he proposed.

11 All this does is share the responsibility.
12 In other words, this is concurrent jurisdiction. The
13 chances are that 99 percent of these matters will be
14 handled by the court. It is only where there are certain
15 areas where the legislature may act to nudge the court
16 into action, and if the court doesn't like it, the next
17 day the Court of Appeals can change the rules, and they can
18 go back to what they want to do anyway; but it is the prin-
19 ciple of putting this absolute power without appeal in the
20 hands of the court, without any check at all, that is
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1 objectionable in this particular provision as it is drafted
2 by the committee.

3 THE CHAIRMAN: Are you ready for the question?

4 Delegate Hargrove.

5 DELEGATE HARGROVE: Mr. Chairman, I rise in
6 opposition to this amendment. I think we are really talking
7 about two different things. I think Delegate Willoner is
8 really talking about power. I would suggest that this
9 amendment was placed in the majority report for not
10 only Baltimore City, but for the several counties who have
11 a tremendous amount of legal work which does not fall in
12 any one neat little package. It almost stands to reason that
13 places like Baltimore City, Montgomery County, Baltimore
14 County, Anne Arundel County, and in the future we don't know
15 how many counties, it will be impossible if you cannot create
16 functional divisions.

17 Now, in Baltimore City I would guess that
18 when all of the lower court were created, and they were
19 created by Constitutional amendment, municipal court and
20 the peoples court, that the General Assembly gave each of
21 those courts by Constitutional amendment the very thing

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1 we are talking about here to do by rule. In the municipal
2 court by rule they have several functional divisions,
3 the traffic court, the housing court, and the general
4 criminal court. In the peoples court of Baltimore
5 City they also have by rule, which has been created,
6 incidentally, by the court, several functional divisions.
7 They have their rent court, a tort court, and a
8 contract court, and any other matters relating to property.

9 Now, I can conceive that this is a suggestion,
10 and I must add, the entire committee agreed on this --
11 we had very little dissent, if any, on this particular
12 point -- that functional divisions are things which are
13 solely within the administrative power of the court, and
14 for that reason, I would oppose the amendment.

15 THE CHAIRMAN: For what purpose does Delegate
16 White rise?

17 DELEGATE WHITE: Mr. President, I wish to ad-
18 dress a question to the chairman, Delegate Mudd.

19 THE CHAIRMAN: Let me find out if anyone de-
20 sires to speak in favor first.

21 Does anyone wish to speak in favor of the

1 amendment? If not, Delegate Mudd, do you yield to
2 a question from Delegate White?

3 DELEGATE MUDD: Yes, Mr. Chairman.

4 THE CHAIRMAN: Delegate White.

5 DELEGATE WHITE: This question arose out of
6 recent experience in Baltimore City. It does not
7 particularly deal in the area of whether it is functional or
8 not, but it possibly addresses itself to the question of
9 the sharing of a particular right of power with the legis-
10 lature.

11 Now, as the result of an incident in Baltimore,
12 I had a discussion with the chief judge of the municipal
13 court, and he indicated to me that when a judge walks
14 through the door and takes his seat, that he is autonomous,
15 and I am a bit concerned as to whether this is an effort
16 to retain this autonomous right of the judiciary, or a
17 move of sharing it.

18 THE CHAIRMAN: Delegate Mudd.

19 DELEGATE MUDD: Of course, it is necessary
20 that a judge be able to act effectively in the area of his
21 jurisdiction, Delegate White, and if your question is

1 somewhat along the line of that of Delegate Bushong, I
2 would say if it is overly exercised or not properly adminis-
3 tered then the redress would be removal or retirement
4 under another section of this article.

5 THE CHAIRMAN: Delegate White.

6 DELEGATE WHITE: In that section do we deal
7 with the question of taking action where a judge has acted
8 improperly?

9 THE CHAIRMAN: In a later section.

10 DELEGATE MUDD: I suggest you read that.

11 THE CHAIRMAN: Are you ready for the question?

12 The question arises on the adoption of Amendment
13 No. 6. A vote Aye is a vote in favor of the amendment;
14 a vote No, a vote against. Cast your vote.

15 Has every delegate voted? Does any delegate
16 desire to change his vote? The Clerk will record the vote.

17 There being 81 votes in the affirmative and 52
18 in the negative, the motion is carried, and the amendment
19 is adopted.

20 There are three other amendments to this
21 section. There could be a question arise as to whether by
reason of the action on the successive amendments that

1 one action made consideration of another amendment improper.
2 Following the procedure last week, I will call up the
3 amendments in an order which I think will give you an
4 opportunity to consider all of them.

5 Will the page please distribute the amendment
6 marked AO, Delegate Bamberger? This will be amendment 7.
7 The Clerk will read the amendment.

8 MR. QUILLEN: Amendment No. 7 to Committee
9 Recommendation JB-1, by Delegate Bamberger:

10 On page 3, section 5.08, Composition of Superior
11 Courts, in lines 11 and 12 strike out the sentence reading
12 "There shall be at least one Superior Court judge resident
13 in each county."

14 THE CHAIRMAN: Is the amendment seconded?

15 (Whereupon, the amendment was seconded.)

16 THE CHAIRMAN: Amendment No. 7, having been
17 seconded, the Chair recognizes Delegate Bamberger to
18 speak to the amendment.

19 DELEGATE BAMBERGER: Mr. Chairman, section 5.08
20 provides that the legislature will set a number of judges
21 who are in the superior court, and will allocate them

1 enough judges to attend to the business.

2 But I suggest that requiring the appointment
3 of a judge from every county very much restricts the
4 ability of this State in some instances to get the best
5 lawyers to serve on the bench. In some counties there are
6 very few lawyers. In Garrett County, I am informed, there
7 are only six lawyers, so when the judicial nominating
8 commission, and I must say that I intend to support as
9 strongly as I can those provisions of this report which
10 deal with the selection and the tenure of the judges, but
11 it will make the job of that nominating commission very
12 difficult, considerably restrict them, if in selecting a
13 judge for the superior court in Garrett County there are
14 only six lawyers to whom they may speak, although as a
15 matter of fact because there may not be enough judicial
16 business in Garrett County to occupy that judge all of the
17 year he will be assigned to sit in other counties.

18 I should point out now that if this amendment
19 is adopted it will require a further amendment in section
20 5.13, which provides that to be eligible for
21 appointment to the superior court the judge must be a

1 resident of the county where that particular superior
2 court vacancy exists.

3 If this amendment is adopted I would suggest
4 that that could be amended by providing that the person
5 must be a resident of the appellate circuit. The State
6 will be divided into seven appellate circuits. That would
7 mean that in the Eastern Shore that the judge who sat
8 in that county some of the time and some other county some
9 of the time would come from that area of the State.

10 The purpose of the amendment is to strengthen
11 the hands of the nominating commission in selecting judges,
12 not to impose upon the nominating commission and upon the
13 legislature a requirement that a judge must live in a
14 particular county, to compel them to go to a very small
15 bar, as I say in Garrett County, to pick a judge among six
16 lawyers and a judge who probably will not sit very often
17 in that county because the business of the courts will not
18 keep him there, and under the other provisions of this
19 article, the chief judge can assign him to another court,
20 to sit in another county in another court.
21

1 THE CHAIRMAN: Any delegate desire to speak in
2 opposition to the amendment? Delegate Grant.

3 DELEGATE GRANT: I am one of the six lawyers.
4 Mr.Bamberger never intends to practice law there.

5 We started back in 1894 to try to get a judge
6 up in Garrett County. They finally decided to increase
7 the membership of the Allegany Bar, we were in the same
8 circuit, two judges. One judge faithfully promised he
9 would come to our county every Monday to take
10 care of our business. As I recall the story in July of
11 1895 or something like that, he came up the first Monday
12 and he never came up again. (Laughter.)

13 It is a very serious matter actually in trying
14 to do business in an area like this where you are so far
15 separated from the judge. We finally did get our
16 own judge up there in 1958 and the practice of law has
17 been tremendously improved. I am quite sure if we lose a
18 judge we would probably be unable to hold six lawyers. If
19 you need an order signed, it was a two and a half hour
20 trip to Cumberland through the snow provided you could get
21 through to get any order or small piece of business taken

1 care of. We used to pass it around and have one lawyer
2 gather up all petitions and take them down. It is a
3 totally unworkable system. A matter of geography, not
4 a matter of manpower or efficiency. The judge sits in
5 Cumberland frequently. They can use three judges there.

6 The main thing is there is a judge up there,
7 somebody who is available to sign orders, he does reside
8 there. You on almost all occasions can get hold of him
9 as necessary to get the work done.

10 If you did not do this, you would have an
11 almost unworkable situation.

12 I regret the fact we only have six lawyers, we
13 could use twelve, but we seem to be stuck with six.
14 I hate to think what would happen if all of them had to
15 go through the arduous difficulty of sixty miles to the
16 nearest judge.

17 THE CHAIRMAN: Before voting on this question,
18 I think the Chair should announce or state to you the
19 purport of the other two amendments which I think are
20 directed at the same end and which I will at the
21 appropriate time suggest be presented together. One is

1 care of. We used to pass it around and have one lawyer
2 gather up all petitions and take them down. It is a
3 totally unworkable system. A matter of geography, not
4 a matter of manpower or efficiency. The judge sits in
5 Cumberland frequently. They can use three judges there.

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7 somebody who is available to sign orders, he does reside
8 there. You on almost all occasions can get hold of him
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11 almost unworkable situation.

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13 could use twelve, but we seem to be stuck with six.
14 I hate to think what would happen if all of them had to
15 go through the arduous difficulty of sixty miles to the
16 nearest judge.

17 THE CHAIRMAN: Before voting on this question,
18 I think the Chair should announce or state to you the
19 purport of the other two amendments which I think are
20 directed at the same end and which I will at the
21 appropriate time suggest be presented together. One is

1 a substitute for the other.

2 In view of Delegate Bamberger's explanation of
3 the purpose of his amendment, I do not think that these
4 two other amendments are properly substitutes for his
5 amendment. However, if his amendment should prevail, I
6 think it would be necessary to rephrase somewhat the other
7 two amendments and the Chair would be disposed to give the
8 sponsors an opportunity to do that.

9 One of the amendments would provide in Line 12
10 of this same section after the word "county," add the
11 words "who shall preside over a division of the
12 Superior Court in that county." So that instead of taking
13 out the sentence that would be taken out by Amendment 7,
14 the sentence would read "There shall be at least one
15 Superior Court judge resident in each county who shall
16 preside over a division of the Superior Court in that
17 county."

18 The other amendment would not change that
19 sentence but would add a new sentence at the same place,
20 that is, after the word "county" in Line 12, the new
21 sentence to read "A Superior Court judge shall sit regularly

1 in each county."

2 Is there any further discussion of Amendment
3 No. 7? Are you ready for the question? Delegate Bothe.

4 DELEGATE BOTHE: I have a question of Chairman
5 Mudd.

6 THE CHAIRMAN: Delegate Mudd, do you yield
7 to a question?

8 DELEGATE MUDD: Yes.

9 THE CHAIRMAN: Delegate Bothe.

10 DELEGATE BOTHE: Could you tell me how many
11 counties there are presently in the state which cannot
12 support services of at least one Superior Court judge?

13 THE CHAIRMAN: The Chair is at a loss. What do you
14 mean not support?

15 DELEGATE BOTHE: Enough judicial business to
16 justify the full time services of at least one Superior
17 Court judge.

18 THE CHAIRMAN: Delegate Mudd.

19 DELEGATE MUDD: Every county now has a judge
20 and if Delegate Bamberger has some information to the
21 effect that there is insufficient business in some of

1 these counties to support the need for a resident judge
2 that has not been made available to our committee within
3 the present trend of assigning judges to other counties
4 where the work load is greater and utilizing manpower
5 from the counties where the case load may be less.

6 THE CHAIRMAN: Delegate Bothe, perhaps if I
7 rephrase the question to ask you this. Do you know how
8 many counties there are in which, how many counties that
9 there are with more than one judge at the present time?

10 DELEGATE MUDD: May I check with my staff man?
11 He may have some figures on that.

12 THE CHAIRMAN: Delegate Mudd.

13 DELEGATE MUDD: Delegate Bothe, we can think of
14 twelve counties at the moment with only one judge.

15 THE CHAIRMAN: Delegate Mason.

16 DELEGATE MASON: I would like to ask Delegate
17 Bamberger a question.

18 THE CHAIRMAN: Delegate Bamberger, do you yield to
19 a question?

20 DELEGATE BAMBERGER: Yes, sir.

21 THE CHAIRMAN: Delegate Mason.

1 DELEGATE MASON: Delegate Bamberger, would
2 your amendment mean that in Baltimore City we could be
3 without a resident Superior Court judge?

4 THE CHAIRMAN: Delegate Bamberger.

5 DELEGATE BAMBERGER: Yes, if the legislature
6 would be so foolish as in the exercise of its power to
7 allocate judges around the state to say that we don't need any
8 judges in Baltimore City that could happen but that suggests
9 to me a lack of confidence in the legislature that is
10 incredible.

11 If your question was addressed to whether he
12 sits there or whether he lives there --

13 THE CHAIRMAN: Delegate Mason.

14 DELEGATE MASON: My question is directed as to
15 whether or not he lives there, not whether he sits there.

16 THE CHAIRMAN: Delegate Bamberger.

17 DELEGATE BAMBERGER: The amendment, as I offered
18 it, doesn't direct itself to that because that is in
19 Section 5.13, which provides the eligibility of the judge.
20 You would have to change Section 5.13 and, of course, one
21 of the changes that could be made could guarantee there

1 would be a resident judge from Baltimore City.

2 THE CHAIRMAN: Delegate Mason.

3 DELEGATE MASON: It was my understanding that
4 you did intend to change the 5.13 to be consistent with
5 5.08. If you would change it, then it would mean that
6 we would not necessarily have a judge who was a resident
7 of Baltimore City in the Superior Court, is that correct?

8 THE CHAIRMAN: Delegate Bamberger.

9 DELEGATE BAMBERGER: I would keep an absolutely
10 open mind about your concern for the residence of the judge
11 in Baltimore City. What I am really concerned about is
12 saying to the judicial nominating commissions when you
13 go to pick a judge you only have six lawyers to look at
14 because they are the only ones living in that county and
15 he is not really going to do a lot of his business in that
16 county, he will be in the next county most of the time.

17 THE CHAIRMAN: Any other delegate desire to speak
18 in favor of the amendment? Any delegate desire to speak in
19 opposition? Delegate Grant.

20 DELEGATE GRANT: I would like to suggest to
21 Delegate Bamberger that the problem is simply one of

1 eligibility of the judge, not residency of the judge. We
2 are concerned to have a judge. If you want to con
3 somebody from Southern Maryland to come up there, live on
4 a mountain top, I see no objection to it. The urgency is
5 to have a judge resident in the county. That's the
6 important thing.

7 THE CHAIRMAN: In view of the colloquy that
8 has just ensued I want to again call to your attention the
9 fact that the two amendments to be submitted to you, one
10 will provide the Superior Court judge who shall preside
11 over the division of the Superior Court in that county.
12 The other will provide that a Superior Court judge shall
13 sit regularly in each county. Neither would appear to
14 have any application to residence. Delegate Smith.

15 DELEGATE MARVIN SMITH: I am from the judicial cir-
16 cuit that was the last circuit in Maryland to have a
17 resident judge in each county. It has only been since
18 June a year ago, if I recall correctly, that we had a
19 resident judge in each of the counties in the Second
20 Judicial Circuit. When Judge Clark was appointed over in
21 Talbot County.

1 During all of my practice at the Bar, our judge,
2 prior to the appointment of Judge Clark, was shared with
3 Talbot County.

4 Mr.Chairman, you have taken away from us our
5 delegate so far as the House of Delegates is concerned.
6 I would like to echo all that Delegate Grant said and
7 to suggest to you, sir, that there is a need for a judge
8 to be available in every county. When Delegate Bamberger
9 wants to get an order signed, he can go down to the
10 Court House in BaltimoreCity and there are a number of
11 judges available. If we have no judge, then of
12 necessity we have to drive a distance, a hardship is
13 created.

14 Judge Sherbow will recall, I know, very vividly,
15 that when the Constitutional Convention Commission
16 originally suggested that there be no requirement with
17 reference to a resident judge, that the committee of which
18 Judge Sherbow was Chairman, insofar as the State Bar
19 Association is concerned, gave a very loud protest. It
20 was as a direct result of that protest that the present
21 provision was put into the draft of the Constitution.

1 THE CHAIRMAN: Are you ready for the question?
2 The question arises on the adoption of Amendment to
3 No. 7, a vote Aye is a vote in favor of the adoption of
4 the amendment. A vote no is a vote against. Cast your
5 vote.

6 (Whereupon, a roll call vote was taken.)

7 THE CHAIRMAN: Has every delegate voted? Has
8 every delegate now voted? Does any delegate desire to
9 change his vote? The Clerk will record the vote. There
10 being 11 votes in the affirmative and 15 in the negative,
11 the motion is lost and the amendment fails.

12 Pages will please distribute the amendment
13 marked AS. Please mark this Amendment No. 8. While
14 waiting for that to be distributed, the Chair would like
15 to inquire of Delegate Chabot was the Chair correct in
16 assuming your proposed amendment was directed to the same
17 point as the amendment No. 8?

18 DELEGATE CHABOT: Yes, sir, except that Amendment
19 No. 8 would require that the judge who is the resident
20 be the one who sits.

21 THE CHAIRMAN: I understand that. There is a

1 difference but directed to the same point.

2 DELEGATE CHABOT: Yes, sir.

3 THE CHAIRMAN: At the appropriate time, I will
4 recognize you and suggest you offer yours as a substitute.
5 The Clerk will read Amendment No. 8.

6 MR. QUILLEN: Amendment No. 8, by Delegates
7 Grant, Clagett, and Henderson, to Committee Recommendation
8 No. JB-1. On Page 3, Section 5.08, Composition of
9 Superior Court, line 12, after the word "county" insert
10 the following: "who shall preside over a division of
11 the Superior Court in that county".

12 THE CHAIRMAN: Is the amendment seconded?

13 (Whereupon, the amendment was seconded.)

14 THE CHAIRMAN: The amendment having been
15 seconded, the Chair recognizes Delegate Grant, the sponsor,
16 to speak to the amendment.

17 DELEGATE GRANT: There is not a great deal to
18 be said about this. It is mainly a housekeeping item to
19 indicate, in the words of Chairman Mudd when he talked about
20 exclusively to have in the Constitution what we mean to have
21 in the Constitution.

1 This would prevent the unlikely circumstance
2 brought up by Delegate Clagett yesterday that one court
3 might be set up in the entire state in Annapolis whose
4 jurisdiction would extend over the entire state, that
5 all judges and litigants would have to come to Annapolis
6 to attend this court.

7 The critical thing brought up in the discussion
8 of the last amendment is simply to keep justice close to the
9 people. I would hope the committee would accept this
10 amendment.

11 THECHAIRMAN: Delegate Mudd, do you desire
12 to speak in opposition to this amendment?

13 DELEGATE MUDD: No, Mr.Chairman, unless some
14 members of my committee desire to speak in opposition, it
15 is the disposition of me personally,if Delegate Grant
16 would accept one suggestion, to concur in this amendment ,
17 if he would delete in Line 4 "a division of".
18 We have some reluctance to use the word "division" in this
19 connection because it might be confused with a functional
20 division.

21 THE CHAIRMAN: Delegate Grant, would you accept

1 the suggested modification of the amendment?

2 DELEGATE GRANT: I would.

3 THE CHAIRMAN: Would your seconder accept?

4 (The seconder accepted.)

5 THE CHAIRMAN: For what purpose does Delegate
6 Hargrove arise?

7 DELEGATE HARGROVE: I would like to ask Delegate
8 Grant a question.

9 THE CHAIRMAN: Just a second. Amendment No.
10 8 is modified by the mover and the seconder to eliminate
11 the words "a division of" in Line 4. Strike out the
12 words "a division of" so that it reads "who shall preside
13 over the Superior Court in that county."

14 Delegate Hargrove, Delegate Grant, do you yield
15 to a question from Delegate Hargrove?

16 DELEGATE GRANT: Yes, I do.

17 THE CHAIRMAN: Delegate Hargrove.

18 May I break in a moment. I realize it is
19 annoying to say the least to have me repeat the name
20 before you use the microphone, but we have considered it
21 back and forth a number of times and it seems to be the

1 only way we can possibly keep the tape accurate. There
2 is no way other than that for one listening to the tape
3 to know who is speaking and the person operating the
4 console also tells me it is impossible for her to know
5 what switch to throw if several people are on the floor
6 unless I announce the name. So please pause long enough
7 to let me state the name. Delegate Hargrove.

8 DELEGATE HARGROVE: Delegate Grant, I think the
9 committee and myself are certainly in favor of the idea but
10 I would like to ask you this. Would it not preclude a
11 judge coming from somewhere else who resided, say, in
12 Garrett County, for example, if the judge became sick if
13 this amendment were adopted in its present language?

14 THE CHAIRMAN : Delegate Grant.

15 DELEGATE GRANT: No, I don't believe it would.
16 This is a very common occurrence and it is provided for
17 not only may judges transfer between courts, they may
18 also transfer between levels of courts. I take from the
19 committee's explanation there would be no difficulty in
20 this at all.

21 THE CHAIRMAN: Delegate Hargrove.

1 DELEGATE HARGROVE: It seems to me in putting
2 this in the constitution and the prior sentence says
3 "there shall be a resident judge in every county" then
4 you designate that resident judge as one who sits in
5 this division, that is somewhat restrictive. Perhaps
6 there is another amendment coming around.

7 THE CHAIRMAN: Delegate Grant.

8 DELEGATE GRANT: I do not see that difficulty
9 with it but I am open to something that someone might
10 suggest.

11 THE CHAIRMAN: Delegate Chabot.

12 DELEGATE CHABOT: Mr. Chairman, may I ask this.
13 Perhaps the best way of putting this is to ask
14 Delegate Grant if he will yield for a question. Perhaps
15 the substitute can be made a part of the original amendment
16 without a vote.

17 THE CHAIRMAN: We could do that or perhaps just as
18 simply offer the substitute so that everyone will see it.
19 I think this would be an appropriate time.

20 DELEGATE CHABOT: I would call out Amendment
21 marked AT.

1 Please mark this amendment No. 9, offered as a substitute
2 for Amendment No. 8. The Clerk will read the amendment.

3 MR.QUILLEN: Amendment No. 9 to Committee
4 Recommendation No. JB-1, by Delegate Chabot.

5 On Page 3, Section 5.08 Composition of Superior Court,
6 line 12 after the period, insert the sentence: "A
7 Superior Court judge shall sit regularly in each county."

8 THE CHAIRMAN: Is the amendment seconded?

9 (Whereupon, the amendment was seconded.)

10 THE CHAIRMAN: The amendment having been seconded,
11 the Chair recognizes Delegate Chabot to speak to the
12 amendment.

13 DELEGATE CHABOT: The purpose of the amendment
14 is essentially the same as the purpose of Amendment No.
15 8 except that I suggest that it retains the maximum
16 flexibility possible in that it does not absolutely require
17 that the same person who is the judge who is resident in
18 the county be the one who is sitting regularly in the
19 county.

20 It also eliminates the problem which the sponsors
21 of Amendment No. 8 agree to eliminate by striking reference

1 to a division.

2 I would ask if the sponsors would agree at
3 this point to substitute Amendment No. 9 for their
4 amendment.

5 THE CHAIRMAN: Delegate Grant, you have been
6 asked whether you would agree to the substitution of
7 Amendment No. 9 for Amendment No. 8. Delegate Grant.

8 DELEGATE GRANT: May I answer in just a moment?

9 THE CHAIRMAN: Yes. While Delegate Grant is
10 doing that, I am very sorry to tell you that the doctor
11 has ordered the First Vice President Clark home. As
12 many of you know, he has been suffering from a very heavy
13 cold for the past ten days. He has been urged to stay home
14 but has been most reluctant to do so. The doctor has
15 finally taken the matter in hand and has sent him home.
16 I am sure we hope he will be back with us in a very few
17 days. Delegate Grant.

18 DELEGATE GRANT: I would like to ask a question
19 of Delegate Chabot.

20 THE CHAIRMAN: Delegate Chabot, do you yield to a
21 question from Delegate Grant?

1 DELEGATE CHABOT: Certainly.

2 THE CHAIRMAN: Delegate Grant.

3 DELEGATE GRANT: The concept we are trying to
4 get at in this is that each county shall have a court.
5 If you just say a Superior Court judge shall sit regularly in
6 each county this does not imply the county would necessarily
7 have a court whereas if you have it the other who, "who
8 shall preside over the Superior Court in that county,"
9 it makes it very definite that there shall be a Superior
10 Court in that county.

11 THE CHAIRMAN: Delegate Chabot.

12 DELEGATE CHABOT: I find it difficult to see how
13 a judge can sit regularly in the county without that
14 court being in the county. For that reason, I suppose
15 that I must maintain my amendment. I suggest that this
16 will provide the opportunity for the judge who is resident
17 in the county to sit elsewhere at various times in the
18 state and to permit those who assign the judicial personnel
19 to assign some other judge to that county at certain times.

20 It will permit the assignment of other judges
21 when the judge who is resident in the county is indisposed for

1 one or another reason. In either event, whether you take
2 my amendment or take Amendment No. 8, although neither of
3 them will make for the complete tidiness that was
4 suggested by Amendment No. 7, I think that either Amendment
5 or 9 will facilitate the judicial process at the places
6 where it is needed by the people. I suggest that is a
7 consideration that we should keep before us to a great
8 extent in considering this article.

9 THE CHAIRMAN: Any delegate desire to speak in
10 opposition to Amendment No. 9? Delegate Grant.

11 DELEGATE GRANT: Delegate Chabot, will you
12 yield for a question?

13 THE CHAIRMAN: Does Delegate Chabot yield
14 for a question?

15 DELEGATE CHABOT: Yes, sir.

16 THE CHAIRMAN: Delegate Grant.

17 DELEGATE GRANT: I think it is mainly a matter
18 of draftsmanship. Would you be willing to modify your
19 substitute to say a Superior Court judge shall sit
20 regularly over the Superior Court in each county.

21 THE CHAIRMAN: Delegate Chabot.

1 DELEGATE CHABOT: I agree to that amendment.

2 THE CHAIRMAN: Does the seconder accept the
3 modification of Amendment No. 9?

4 DELEGATE BENSON: I seconded it.

5 THE CHAIRMAN: Do you accept the modification?

6 DELEGATE BENSON: Yes.

7 THE CHAIRMAN: Modification as the Chair
8 understands it is in Line 4 after the word regularly, was
9 it, Delegate Grant?

10 DELEGATE GRANT: Yes, regularly over the
11 Superior Court in each county.

12 THE CHAIRMAN: Would you not say sit in
13 rather than sit over?

14 DELEGATE GRANT: Sit in.

15 THE CHAIRMAN: Sit in.

16 DELEGATE GRANT: Sit in.

17 THE CHAIRMAN: Modification of Amendment No. 9
18 as made by the sponsor and seconded, accepted by his
19 seconder is in Line 4 after the word "regularly" insert the
20 words "in the Superior Court" so that the language would
21 then read "A superior Court judge shall sit regularly

1 in the Superior Court in each county." With the modification
2 that -- for what purpose does Delegate Clagett rise?

3 DELEGATE CLAGETT: Mr. Chairman, I am in complete
4 accord with Delegate Grant.

5 THE CHAIRMAN: For what purpose do you rise?

6 DELEGATE CLAGETT: The purpose of suggesting
7 a clarification to get exactly at the intent of these two
8 motions which really do not quite hit the point on the
9 head. I think we could very easily do it by simply
10 inserting in Line 11 "There shall be" --

11 THE CHAIRMAN: Line 11 of what?

12 DELEGATE CLAGETT: Of Section 5.08.

13 THE CHAIRMAN: Proceed.

14 DELEGATE CLAGETT: In the original. After the
15 word "be" in Line 11, "There shall be a Superior Court
16 and at least one Superior Court judge resident in each
17 county".

18 THE CHAIRMAN: Delegate Grant shakes his head.
19 I take it Delegate Chabot is shaking his head negatively.
20 They don't accept your suggestion. For what purpose does
21 Delegate Schneider rise?

1 DELEGATE SCHNEIDER: To speak against Amendment
2 9.

3 THE CHAIRMAN: Just a moment. May the Chair
4 inquire of Delegate Grant whether the purpose of his inquiry
5 of Delegate Chabot was to agree to the substitution of
6 amendment 9 for amendment 8 if the change were made?

7 DELEGATE GRANT: It was and it is agreed to.

8 THE CHAIRMAN: Delegates Clagett and Henderson
9 agree to the substitution?

10 DELEGATE HENDERSON: I do.

11 THE CHAIRMAN: Delegate Clagett.

12 DELEGATE CLAGETT: I will agree.

13 THE CHAIRMAN: This being the case, the
14 question before you is now Amendment No. 9, it having been
15 substituted for Amendment No. 8 by agreement. The chair
16 reocognizes Delegate Schneider to speak in opposition to
17 the amendment.

18 DELEGATE SCHNEIDER: Mr. Chairman, we in committee
19 discussed use of the word "regularly" and we decided, as
20 I remember, that the word "regularly" does not necessarily
21 mean full time. The intention of the committee was

1 there should be a full time Superior Court in each county.

2 To say there should be one judge sitting
3 regularly in the county could mean the judge from
4 Allegany County would go regularly once a week to Garrett
5 County and sit rather than that there should be a full-
6 time judge in Garrett County. What we have with these
7 two amendments which have now been combined in nothing
8 but confusion. I think perhaps if we want to keep it
9 clear we better stick with the original recommendation of
10 the committee.

11 THE CHAIRMAN: Any other delegate desire to
12 speak in favor of the amendment?

13 Any delegate desire to speak in opposition?
14 Delegate Byrnes.

15 DELEGATE BYRNES: Mr. Chairman, I would like to
16 direct a question, if I could, to one of the proponents,
17 Delegate Grant.

18 THE CHAIRMAN: I want to find if someone
19 desires to speak in opposition first. Delegate Marion, do
20 you desire to speak in opposition.

21 DELEGATE MARION: It seems clear to me the

1 intention of the committee in requiring at least one
2 Superior Court judge to reside in each county was to have
3 essentially the situation which we have now where there is
4 a judge of the circuit court or in Baltimore City
5 certainly a Supreme Bench who resides and who holds court
6 in that county. I think to put in language of this
7 sort would first of all be unnecessary because it seems
8 clear to me by the assignment power, this will be taken
9 care of.

10 I am also concerned that it might be restrictive
11 and create some inflexibility in the assignment of
12 judges which the committee wanted to prescribe in a more
13 generous fashion throughout the state where needed to
14 meet the judicial business of the state wherever necessary
15 to meet it. Therefore to be able to assign judges without
16 having to worry about language like whether the judge you
17 want to assign, if you assign him, will not thereby be
18 sitting regularly in the county in which he is resident.

19 I see problems with this and would urge the
20 Convention to defeat the motion and leave the language as
21 the committee recommended it.

1 THE CHAIRMAN: Does Delegate Grant yield to a
2 question of Delegate Byrnes?

3 DELEGATE GRANT: Yes.

4 THE CHAIRMAN: Delegate Byrnes.

5 DELEGATE BYRNES: Delegate Grant, I share Delegate
6 Marion's concern just expressed. I wonder if it is your
7 direct intention to prohibit this particular judge from
8 being moved around the state. If I may add, Mr.
9 Chairman, if it is not your intention, I don't understand
10 the purpose of it.

11 THE CHAIRMAN: Delegate Grant.

12 DELEGATE GRANT: The intention is simply to
13 have first of all a Superior Court in each county.
14 Secondly a resident judge in each county from which you
15 may assume that normally the resident judge in that county
16 will sit in the Superior Court in that county. However,
17 there is no intention to preclude any Superior Court judge
18 from being assigned to sit in that county as the court
19 may desire.

20 This is the value of Delegate Chabot's language,
21 a Superior Court judge, instead of saying the Superior

1 Court judge.

2 THE CHAIRMAN: Does Delegate Sybert desire to
3 speak in opposition to the amendment?

4 DELEGATE SYBERT: Mr. Chairman, it seems to me
5 that amendment No. 8 more nearly arrives at the end that
6 the proposers of the amendment seem to be pressing for on
7 the offer of Amendment No. 8.

8 I assume the intention was to provide there
9 should be at least one Superior Court judge resident in
10 the county and that he ordinarily should preside in that
11 court. I think if you insert the word "ordinarily" in
12 the Grant Amendment No. 8, that would do several things.
13 It would provide that the resident judge ordinarily,
14 usually, would preside in that court, would not preclude
15 him from being moved elsewhere as the demands in other
16 counties dictated.

17 It would also not preclude a judge of the
18 Superior Court from any other place in the state from
19 being brought in.

20 I take it that Delegate Grant has already with-
21 drawn in effect or rather, his amendment, or agreed that

1 Amendment No. 9 take its place. If that is true, I would
2 like to re-offer Amendment No. 8 with myself and any
3 others who might want to join as sponsors but simply
4 insert one word in it, in Amendment No. 8, Line 3, after
5 the words "who shall" before the word "preside" insert
6 the word "ordinarily" "who shall ordinarily preside over
7 the Superior Court in that county". That would have the
8 effect, as I say, of seeing to it that the judge who
9 lived in the county would ordinarily preside in the
10 Superior Court of that county, which would be normal, but
11 the word "ordinary" would not preclude him from being
12 moved elsewhere, if his time was not fully occupied to
13 some place where it was needed, would not preclude bringing
14 in of Superior Court judges from other jurisdictions when
15 that might appear necessary. I point out that Amendment
16 No. 9 would seem, maybe I am wrong, would seem to preclude
17 the shifting of judges from other Superior Courts to sit
18 in the Superior Court in any given county.

19 I therefore would like to re-offer amendment No.
20 8 with the word "ordinarily" inserted after the words
21 "who shall" and before the word "preside" in Line 4.

1 THE CHAIRMAN: If you mean you are offering
2 that now as a substitute for the substitute, I think I
3 have to rule you out of order, Delegate Sybert.

4 DELEGATE SYBERT: I think that's what the
5 Parliamentary effect would be.

6 THE CHAIRMAN: I don't think the motion is in
7 order at this time. For what purpose does Delegate
8 Weidemeyer rise?

9 DELEGATE WEIDEMEYER: I rose to say I would
10 like to joint Delegate Sybert and ask Delegate Chabot if
11 he would withdraw his Amendment No. 9 so we could take No.
12 8 as Delegate Sybert suggested and proceed to get this
13 matter settled.

14 THE CHAIRMAN: Delegate Chabot.

15 DELEGATE CHABOT: I respectfully suggest that
16 we will get it settled if we vote on 9 as it has been
17 accepted by the people who had originally offered 8.

18 THE CHAIRMAN: For what purpose does Delegate
19 Johnson rise?

20 DELEGATE JOHNSON: Mr. Chairman, for the purpose
21 of making an observation hopefully for clarification..

1 THE CHAIRMAN: Proceed.

2 DELEGATE JOHNSON: We become involved in this
3 particular hassle which understandably is important
4 because in questioning, one of our delegates spotted the
5 fact it is just possible that a county could be left
6 without a "superior court" inasmuch as it isn't spelled out.

7 However, Chairman Mudd clearly indicated that it
8 is the intention of the committee that there shall be
9 at least one Superior Court in each county and at least
10 one Superior Court resident judge in each county.

11 I strongly urge that we leave this matter to
12 the Committee on Style to straighten out. It can be easily
13 corrected by saying something like there shall be one
14 Superior Court if one county and at least one resident
15 Superior Court judge in each county or something to that
16 effect and I urge the makers of the various motions and
17 amendments to withdraw that and leave this matter for
18 Style. The record is clear the intent will be carried out.

19 THE CHAIRMAN: Delegate Chabot has indicated he
20 doesn't desire. For what purpose does Delegate Kiefer
21 rise?

1 DELEGATE KIEFER: Mr. President, along the
2 lines of Delegate Johnson, if this, I would like to ask
3 Delegate Mudd if this is a correct interpretation, that
4 there is to be one Superior Court located in each county
5 and one Superior Court judge resident in each county.

6 THE CHAIRMAN: Delegate Mudd.

7 DELEGATE MUDD: That was our intention, yes.

8 THE CHAIRMAN: I am not sure the Chair under-
9 stands because the purpose of the amendment is that there
10 is only one Superior Court, the purpose of the
11 recommendation as the Chair understands, it is there is
12 to be only one Superior Court in the entire state. There-
13 fore, I did not understand either the question or the
14 answer. Delegate Mudd.

15 DELEGATE MUDD: As I think I commented, Mr.
16 Chairman, in the presentation of this, there was no
17 intention on the part of the committee to interfere with
18 the present facilities that are operating under the
19 circuit system. Our recommendation does create one
20 Superior Court.

21 But obviously that Superior Court will have to

1 function in the political subdivisions.

2 THE CHAIRMAN: I take it that the answer to
3 your question then is not that there be a separate Superior
4 Court in each county, but that the Superior Court will sit
5 in each county, is that correct?

6 DELEGATE MUDD: Yes.

7 THE CHAIRMAN: Does that answer your question,
8 Delegate Kiefer?

9 DELEGATE KIEFER: Thank you.

10 THE CHAIRMAN: For what purpose does Delegate
11 Scanlan rise?

12 DELEGATE SCANLAN: I wish to speak against
13 Amendment No. 9.

14 THE CHAIRMAN: You may proceed.

15 DELEGATE SCANLAN: The events of the last 40
16 minutes furnish a small example of why perhaps Shakespeare
17 was justified in his words to Henry the V when he said
18 "The first thing we do is kill all the lawyers."
19 (Applause.) I was quite surprised when the Chairman of the
20 Committee, who waged a magnificent fight for a unified
21 judicial system and held firm on many motions yielded so

1 readily to what seemed an innocuous motion but one, I suggest,
2 can do no good, is unnecessary and, worse, indicates
3 that he really didn't mean it all the time.

4 It is perfectly clear what the intention of the
5 committee was on these various matters that there be a
6 resident judge in each county. It is also perfectly clear
7 judges of the Superior Court can be assigned throughout the
8 State as case loads change. We should leave it to
9 legislative history rather than trying to write every word
10 of caution into this Constitution.

11 For that reason I again oppose Amendment No. 9
12 and Amendment 8 and any further elaboration of Section 5.08
13 on this point. It seems perfectly clear, if not in
14 text, certainly in the abundant legislative history and
15 intention demonstrated on the floor, certainly in response to
16 Mr. Johnson's comments and Mr. Kiefer's question.

1 THE CHAIRMAN: Does any delegate desire to speak
2 in favor of Amendment No. 9?

3 Delegate Clagett.

4 DELEGATE CLAGETT: Whereas I agree with much of
5 what Delegate Scanlan said, I do not want to join him in
6 that common resting place to which he is confining us all.

7 Therefore, I would want to at least accomplish
8 the purpose for which Amendment No. 8 was originally filed
9 and now Amendment No. 9 is before you.

10 That is to insure that there be individuals of
11 the Superior Court in each of the counties. I feel cer-
12 tain that on the basis of the discussion now, 42 minutes,
13 that the Style and Drafting clearly have before them what
14 we wish to accomplish and can accomplish that purpose
15 exactly and specifically.

16 Therefore, I ask you to vote in favor of Amend-
17 ment No. 9.

18 THE CHAIRMAN: Any other delegate dsire to
19 speak in opposition to Amendment No. 9?

20 Delegate Bard.

21 DELEGATE BARD: I would like to ask Delegate

1 Clagett a question.

2 THE CHAIRMAN: Does Delegate Clagett yield to
3 a question.

4 DELEGATE CLAGETT: Yes, sir.

5 THE CHAIRMAN: Delegate Bard.

6 DELEGATE BARD: A while ago you said you felt
7 there ought to be a division of the Superior Court in each
8 county. Are there divisions that are geographical in
9 nature or are not the divisions functional in nature?

10 DELEGATE CLAGETT: I would agree with the chair-
11 man of the committee, Delegate Mudd, that the word "divi-
12 sion" be stricken if it causes any confusion. I mean for
13 there to be a Superior Court in each of the 24 counties.
14 That includes at least one, Delegate Mason, for Baltimore
15 City.

16 THE CHAIRMAN: Is there any further discussion?
17 Delegate Marion.

18 DELEGATE MARION: Mr. Chairman, let me if I may
19 try and make one thing clear because it relates to the
20 difference in the terminology between this Section 5.08
21 as presented and Section 5.10 where the language of

1 sitting regularly is used and recommended by your committee.

2 The reason that that language appears in 5.10
3 and not in 5.08 is because as 5.10 is drafted and will
4 be left to the legislature, a District Court judge will not
5 necessarily be resident in each county of the state. The
6 requirement is that he reside at least one judge in each
7 district.

8 That is why the committee felt there should be
9 a requirement that each District Court judge, as spelled
10 out in Section 5.10, shall sit regularly in each county in
11 that district.

12 We did not feel the same language should be
13 placed in Section 5.08 because Section 5.08 does provide
14 that there be at least one Superior Court judge resident
15 in each county. For that reason I urge the defeat of the
16 amendment.

17 THE CHAIRMAN: Are you ready for the question?
18 The clerk will sound the quorum bell.

19 The question arises on adoption of Amendment
20 No. 9. A vote Aye is a vote in favor of the adoption of
21 the amendment, a vote No is a vote against. Cast your

1 votes. Has every delegate voted? Does any delegate de-
2 sire to change his vote?

3 The clerk will record the vote.

4 There being 39 votes in the affirmative, 80 in
5 the negative, the motion is lost and the amendment is re-
6 jected.

7 The chief page will please distribute amendment
8 marked C. Please mark this Amendment No. 10. The clerk
9 will read the amendment.

10 MR. QUILLEN: Amendment No. 10 to Committee
11 Recommendation No. JB-1 by Delegate Bennett.

12 On page 3, Section 5.08, titled Composition of
13 Superior Courts, line 14 after period add:

14 "The rule may provide that a judge assigned to
15 a functional division shall serve no a nonrotational
16 basis."

17 THE CHAIRMAN: Is the amendment seconded?

18 (Whereupon, the amendment was seconded.)

19 THE CHAIRMAN: Delegate Byrnes seconds.

20 The Chair recognizes Delegate Bennett to speak
21 to the amendment.

1 DELEGATE BENNETT: Mr. Chairman, this is a sim-
2 ple declaration of policy contained in the Constitution
3 that would authorize it, or recognize rather, that these
4 functional courts, specialized courts, require special
5 abilities, special training, and that it is good sense
6 and good wisdom to assign wherever possible a judge on
7 a nonrotational basis. That could be done by rule. It
8 is entirely within the discretion of the court.

9 THE CHAIRMAN: Any other delegate desire to
10 speak in opposition to the amendment?

11 Delegate Rybzyński.

12 DELEGATE RYBZYNSKI: I would like to speak in
13 behalf of that.

14 THE CHAIRMAN: Does any delegate desire to
15 speak in opposition to the amendment?

16 Delegate Mudd.

17 DELEGATE MUDD: Mr. Chairman, I am in sympathy
18 with the thought of Delegate Bennett, but it does seem to
19 me this is obviously an unnecessary addition to Section
20 5.08.

21 It is nothing more than a suggestion to the

1 court that it may provide, which is available without such
2 suggestion, for a judge on a nonrotational basis. To me
3 it is adding something unnecessary to the section.

4 THE CHAIRMAN: The Chair recognizes Delegate
5 Rybczynski to speak to the amendment.

6 DELEGATE RYBCYNSKI: Mr. Chairman, what is oc-
7 ccurring here in this section is, we are acting as a giant
8 legislature and I think we should face up to that.

9 As to this section, I would like to go just as
10 quickly as I can within this three minutes into a little
11 background as to why I think this is necessary.

12 As the jurisdiction expands and as the case load
13 expands, we will have the court, Superior Court being
14 broken down into probably the same traditional lines we
15 have now, Criminal Section or Division, Equity Division,
16 and the Law Division. This in turn, as the jurisdiction
17 grows, breaks it down again in to criminal designed for
18 major criminal cases, criminal involving youth court and
19 criminal involving the juvenile.

20 I strongly suggest to you, Mr. Chairman, that
21 at this time it will be important for the Constitution to

1 reflect since we have gone into so much other detail
2 and indicate to the legislature that as to the court
3 itself we are interested in specialties, that a specialist
4 would be wise, where it would be wise to have a specialist
5 in a Juvenile Court, to have a specialist in other courts
6 as it becomes necessary.

7 Now, let us consider the over-all field of, or
8 not over-all field of law but every field of endeavor,
9 every field of endeavor is breaking itself down into spec-
10 ialties. The only field which considers itself competent
11 in every section is that of the law.

12 What happens? In September of every year in the
13 City of Baltimore all of the judges rotate. This means
14 that a judge who has spent a year developing himself in
15 the rules of the Law Court finds himself the following year
16 in the Equity Court. He becomes an expert in that field.
17 He then finds himself rotated to the Criminal Court.

18 This I suggest to you is a thing which should
19 go into the past in a major jurisdiction that handles
20 tens of thousands of cases a year.

21 I strongly suggest to you this would be a good

1 way of seeing to it that where a judge becomes very pro-
2 ficient in a certain field that he will stay in that field.
3 I heard one comment when I mentioned this before, I heard
4 one comment to the effect a judge would become very tired
5 within a certain field. This happens in every field of
6 endeavor where an engineer stays entirely in the electrical
7 field or a medical man stays in one very small narrow
8 field. But he becomes an expert and I think an expert on
9 a bench would not do any harm, but would do much good.

10 THE CHAIRMAN: Any other delegate desire to
11 speak in opposition?

12 Delegate Marion.

13 DELEGATE MARION: Mr. Chairman, I think most of
14 us came down to this Convention with the desire not to
15 write into the Constitution things which were unnecessary
16 and which were self-evident. I respectfully submit this
17 is one of those provisions.

18 I would assume that the language of the proposed
19 amendment would have implicit in it that a judge could be
20 assigned to a functional division on a rotational basis
21 as well as a nonrotational basis. If that is true, then

1 I think implicit in the language of the proposed section
2 is what Delegate Bennett suggests that we adopt implicitly.

3 I suggest for that reason it is unnecessary that
4 we defeat the amendment.

5 THE CHAIRMAN: Any person desire to speak in
6 favor? Any other discussion against?

7 Ready for the question? The clerk will sound
8 the quorum bell.

9 The question arises on the adoption of Amendment
10 No. 10. A vote Aye is a vote in favor of the amendment.
11 A vote No is a vote against. Cast your votes.

12 Have all delegates voted? Does any delegate
13 desire to change his vote? The clerk will record the
14 vote.

15 There being five votes in favor and 106 against,
16 the motion is lost, the amendment is rejected.

17 Are there any other amendments to Section 5.08?
18 If not, we will revert to Section 5.01. I ask the page
19 to distribute the amendment marked BE. Amendment No. 11.
20 The clerk will read the amendment.

21 MR. QUILLEN: Amendment No. 11 to Committee

1 Recommendation No. JB-1 by Delegates Fox and Carson.

2 On page 1, Section 5.01, Judicial Power, in
3 line 14 strike out the word "District" and insert in lieu
4 thereof the word "General"; and,

5 In all other places where the term "District
6 Court" appears in Article V insert in lieu thereof the
7 term "General Court".

8 THE CHAIRMAN: The amendment having been seconded,
9 the Chair recognizes Delegate Fox to speak to the amendment.

10 DELEGATE FOX: Mr. Chairman and members of the
11 committee, I will not take but just a moment of your time.
12 I think this is a very simple proposition. But I see no
13 reason to have two courts in the State of Maryland that
14 have the same name and widely divergent jurisdictions.
15 This is going to cause considerable confusion in Maryland.

16 Baltimore, with the Federal District Court for
17 the District of Maryland and Maryland District Court.
18 In all probability they will be across the street from
19 each other. It will cause confusion as to witnesses'
20 excuses, I thought you mentioned the other District Court,
21 that sort of thing. I suggest the name General Court be

1 used. There used to be a General Court in Maryland in
2 colonial times. It has that tradition. It seems to me
3 it has the virtue of avoiding the confusion.

4 THE CHAIRMAN: Does any delegate -- Delegate
5 Mudd.

6 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
7 men, of course if we consider here by amendment every pos-
8 sible change of name for these four courts, the delibera-
9 tions could go on ad infinitum. I think this name General
10 Court was one not considered in committee, although we did
11 spend considerable time in discussing the names of these
12 courts in the four tiers.

13 After considerable debate and careful considera-
14 tion of all the names suggested, we did adopt the idea of
15 District Court for the court of limited jurisdiction.

16 Our research indicated that this name District
17 Court is a popular and general use in many states for the
18 courts of limited jurisdiction and obviously by virtue of
19 that rather extended use, the conflict has not resulted which
20 Delegate Fox seems to feel might develop in Baltimore with
21 respect to the Federal District Court.

1 Therefore, I respectfully urge this amendment be
2 rejected.

3 THE CHAIRMAN: Is there any other delegate who
4 desires to speak in favor of the amendment?

5 Any delegate desire to speak in opposition?

6 Delegate Byrnes, do you desire to speak in favor
7 of the amendment?

8 DELEGATE BYRNES: In favor. I had the opportuni-
9 ty some months ago to work at the District Court level,
10 U. S. District. I can attest in Baltimore City there is a
11 great deal of confusion even now. I suggest with respect
12 to the Federal system we ought to give real serious con-
13 cern to this.

14 I support the change of the name from District
15 Court. I had never heard of the term "General", but
16 since it does have the colonial tradition, it might be well
17 regarded by this body and I urge it upon you.

18 THE CHAIRMAN: Does any other delegate desire to
19 speak in opposition?

20 Delegate Schneider?

21 DELEGATE SCHNEIDER: Mr. Chairman, I think for

1 the reasons stated by Chairman Mudd, and because we could,
2 I could think of names I like better than District, a
3 lot of names better than General Court, I do not know
4 whether you salute when you walk in the door, seems to be
5 a rather unusual name for a court. It seems to me we have
6 always had problems of identification, many courts use
7 the highest court as Supreme Court. They do not worry
8 about the problem of identification with the U. S. Supreme
9 Court. They do not worry about the problem of identifi-
10 cation with the U. S. Supreme Court. Our Court of Appeals
11 has the same name as U. S. Court of Appeals. We have a
12 Maryland Court of Appeals. We are not about to change that
13 name because somebody is liable to head for Washington or
14 Baltimore or Annapolis or go to Baltimore rather than
15 Annapolis.

16 I think we better stick with the names and not
17 spend all our time on these small changes.

18 THE CHAIRMAN: Any other delegate desire to speak
19 in favor of the amendment?

20 Any against?

21 Ready for the question? Sound the quorum bell.

1 Question arises on adoption of Amendment No. 11.
2 A vote Aye is a vote in favor of the amendment, a vote
3 No is a vote against. Cast your votes.

4 Has every delegate voted? Does any delegate
5 desire to change his vote? The clerk will record the vote.

6 There being 36 votes in the affirmative and 83
7 in the negative, the motion is lost and the amendment fails.

8 Are there any amendments to Section 5.09? The
9 Chair hears none.

10 Are there any amendments to Section 5.10?

11 Delegate Macdonald.

12 DELEGATE MACDONALD: I have an amendment, Mr.
13 Chairman.

14 THE CHAIRMAN: I have it. The page will dis-
15 tribute amendment marked AR, Amendment No. 12. The clerk
16 will read the amendment.

17 MR. QUILLEN: Amendment No. 12 to Committee
18 Recommendation No. JB-1 by Delegate Macdonald.

19 On page 3, Section 5.10, Composition of District
20 Court, line 41, after the word "by" insert the words "lw
21 or".

1 THE CHAIRMAN: Is the amendment seconded?

2 (Whereupon, the amendment was seconded.)

3 THE CHAIRMAN: Amendment having been seconded,
4 the Chair recognizes Delegate Macdonald to speak to the
5 amendment.

6 DELEGATE MACDONALD: Mr. Chairman, somebody
7 remarked that he had seen this amendment before.

8 Fellow delegates, this amendment No. 12 is
9 similar to Amendment No. 6. This relates to the matter of
10 functional divisions, the District Court. A short time
11 ago you approved the same type of amendment for the
12 Superior Court. Everything that was said in favor of
13 Amendment No. 6 would apply with equal force and logic
14 to Amendment No. 12.

15 I urge that it be adopted.

16 THE CHAIRMAN: The Chair recognizes Delegate
17 Mudd.

18 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
19 man of the Convention, there is very little I can say in
20 opposition to this amendment that I did not say and that
21 was not better said by other opponents to the identical

1 amendment on 5.08.

2 I might add this. It is rather strange to me
3 that this body, after adopting the recommendation, an
4 amendment provided by Delegate Macdonald to Section 5.08,
5 allowing the functional division to be created by law or
6 by rule, that we then should have, with all that flexi-
7 bility adopted, and the power granted concurrently to the
8 legislature, that we then should have an amendment by
9 my esteemed friend Delegate Bennett to give us guidelines
10 in the rule-making power of the court after it has already
11 been shared with the legislature.

12 It seems to me that the thought of some of the
13 delegates in composing amendments by way of guidelines
14 in the rule-making power is perhaps somewhat inconsistent
15 with their position in qualifying the rule-making power
16 of the courts in these functional divisions. Other than
17 that, I have nothing more to say in opposition to this
18 amendment than I said in opposition to the amendment to
19 Section 5.08.

20 THE CHAIRMAN: Does any other delegate desire
21 to speak in favor of the amendment?

1 Any other delegate desire to speak in opposition
2 to the amendment?

3 Ready for the question? The question arises
4 on the adoption of Amendment No. 12. A vote Aye is a vote
5 in favor of the amendment. A vote No is a vote against.
6 Cast your votes.

7 Has every delegate voted?

8 Does any delegate desire to change his vote?
9 The clerk will record the vote.

10 There being 86 votes in the affirmative and
11 33 in the negative, the motion is carried, the amendment
12 is adopted.

13 Is there any other amendment to Section 5.10?
14 Delegate Grant.

15 DELEGATE GRANT: I have a point of inquiry, Mr.
16 Chairman.

17 THE CHAIRMAN: State your inquiry.

18 DELEGATE GRANT: In order to avoid a confusing
19 40 minutes again like we went through the last time, I
20 would like to address a couple questions to Chairman Mudd
21 which I think would preclude the necessity of amendment.

1 THE CHAIRMAN: Delegate Mudd, can you respond
2 to an inquiry?

3 DELEGATE GRANT: Delegate Mudd, as I understand
4 Section 5.10, it contemplates there would be physically
5 located in each county a District Court facility.

6 THE CHAIRMAN: Delegate Mudd.

7 DELEGATE MUDD: Yes, more specifically provided
8 for under the clerk of the court section wherein it is
9 provided there shall be a clerk of the District Court in
10 every county.

11 THE CHAIRMAN: Delegate Grant.

12 DELEGATE GRANT: My second question to you would
13 be this: Am I correct in understanding that a resident
14 judge, which we have just agreed upon for the Superior
15 Court in each county, could sit in the District Court of
16 that county in the facility provided in that county for
17 District Court if so assigned by the courts?

18 THE CHAIRMAN: Delegate Mudd.

19 DELEGATE MUDD: Under assignment pursuant to
20 the rule-making power? Yes, that is possible.

21 THE CHAIRMAN: Delegate Grant.

1 DELEGATE GRANT: In that event, Mr. Chairman, I
2 would not desire to introduce this amendment.

3 THE CHAIRMAN: Thank you.

4 (Applause.)

5 Delegate Bennett, I have an amendment to Sec-
6 tion 5.10 sponsored by you similar to the amendment you
7 sponsored a few minutes ago. Do you desire to offer the
8 amendment?

9 DELEGATE BENNETT: Mr. President, in view of the
10 fact that the record would show it was the intention of
11 the committee that these functional judges may serve on a
12 nonrotational basis and in view of the very admirable
13 and overwhelming desire not to put anything into the Con-
14 stitution that would be anything other than bare bones,
15 which I predict will arise to trouble some of the members
16 of this Assembly, I withdraw the amendment.

17 THE CHAIRMAN: The Chair thanks the delegate.

18 (Applause.)

19 Will the doorman please see if Delegate Malkus
20 is in the corridor or in the lounge. The Chair is advised
21 Delegate Malkus indicated he was unwell and had gone home.

1 I have an amendment sponsored by him. I take
2 it that the Committee of the Whole will not conclude its
3 consideration of Committee Recommendation JB-1 today and
4 will thereafter afford Delegate Malkus the opportunity
5 to present his amendment tomorrow.

6 Are there any other amendments to Section 5.10?
7 The Chair hears none.

8 There is a minority amendment to Section 5.11,
9 I believe. The pages will please distribute the amendment
10 marked B. This will be Amendment No. 13. The clerk will
11 read the amendment.

12 MR. QUILLEN: Amendment No. 13 to accompany
13 Minority Report No. JB-1 to Committee Recommendation No.
14 JB-1 by Delegates Johnson, Harkness, Hickman, Kahl,
15 Murphy, Siewierski, and Rush:

16 On page 3, Section 5.11, Commissioners, strike
17 out all of lines 45 through 50 and on page 4, line 1,
18 strike out the word "therein" and insert in lieu thereof
19 the following:

20 "The General Assembly may provide for commis-
21 sioners of the District Court. The number, qualifications,

1 appointment, compensation and tenure of District Court
2 commissioners shall be prescribed by law?

3 THE CHAIRMAN: The amendment having been seconded,
4 the Chair recognizes Delegate Johnson to speak to the
5 amendment.

6 DELEGATE JOHNSON: Mr. Chairman, perhaps I
7 should say at the outset that Delegate Grant has an amend-
8 ment to this section which is acceptable to the minority
9 and we would prefer that it be treated in the same context.

10 THE CHAIRMAN: You mean this Amendment 13 will be
11 withdrawn and a separate amendment --

12 DELEGATE JOHNSON: No, there is a separate amend-
13 ment that goes a little beyond our amendment. I do not
14 know the number of it but Delegate Grant perhaps --

15 THE CHAIRMAN: I had the amendment but I do not
16 understand what you mean by considered in context. I
17 will advise the House what the amendment is so that they
18 may have it in mind. It is to strike out the last
19 sentence on lines 1 through 4 of Section 5.11 and insert
20 in lieu thereof the following:

21 "Commissioners may exercise such power as

1 prescribed by rule."

2 The Chair does not understand that there is any
3 connection between those two amendments. Can you explain
4 further, Delegate Johnson?

5 DELEGATE JOHNSON: Mr. Chairman, perhaps there
6 is not any connection. It is just that upon deliberation
7 the Minority Committee agrees with Delegate Grant, and
8 upon the adoption of the first portion of the Minority
9 Committee Recommendation with respect to the appointment
10 of the commissioners by the General Assembly, if that
11 were in fact adopted, we would of course be in favor of
12 extending the power of the court, extending the rule-
13 making power of the court with respect to the powers of
14 the commissioners.

15 THE CHAIRMAN: Very well, the Chair announces
16 it will call up Delegate Grant's immediately after con-
17 sideration of Amendment 13.

18 You may proceed to discuss Amendment 13, Dele-
19 gate Johnson.

20 DELEGATE JOHNSON: Mr. Chairman, as I understand
21 it, we are dealing now only with Amendment 13. That is

1 Amendment No. B of the Minority Committee. Is that the
2 only amendment before us.

3 THE CHAIRMAN: Yes.

4 DELEGATE JOHNSON: I believe they are divisible
5 but I wanted to make our position clear that we are also
6 in favor of the anticipated amendment to be supplied by
7 Delegate Grant.

8 Mr. Chairman and fellow delegates, in the view
9 of the minority and many other delegates, I submit this
10 is probably the most important amendment that will be
11 before you today that has been before you, and that
12 probably will be before you because of the lateness of
13 the hour.

14 I commented upon the reasons why the minority
15 felt so strongly about this, first in the general presen-
16 tation and then in the presentation of the minority report
17 earlier this afternoon.

18 May I say just a few other slight comments, and
19 ask that you take these comments into serious considera-
20 tion?

21 If you believed that the creation of an office,

1 that is, the establishment of an office, the manner it
2 is to be filled, the length of term of the employee, if
3 you believe those matters are in fact judicial matters
4 or judicial functions, then you will vote against this
5 amendment.

6 If, on the other hand, you want to retain the
7 office of judge, with all the respect that it both needs
8 and deserves, then you will protect the Judiciary from
9 this unprecedented power grab, and I might add a power
10 grab that has not been sought by the Judiciary or by the
11 judicial system of Maryland.

12 If in fact you want to protect our sound judi-
13 cial system from these problems, you will vote in favor
14 of the amendment.

15 Upon the adoption of this amendment, judges of
16 course will be permitted by the legislature to hire secre-
17 taries and bailiffs "within" the immediate personal office
18 of the judge. This is right and proper, we submit. But
19 to extend this nonjudicial function would be the greatest
20 blow we could render to our state judicial system.

21 We submit that inasmuch as no other state permits

1 this type of legislative function on the part of its
2 Judiciary, Maryland will stand out like a sore thumb.

3 Unless you want our judges to subject themselves
4 to both partisan and nonpartisan pressures, to defend
5 themselves to the charges that will almost assuredly be
6 made by disgruntled job applicants and dismissed commis-
7 sioners, then you will vote, and I urge you to vote, in
8 favor of this amendment.

9 THE CHAIRMAN: The chair recognizes Delegate
10 Mudd.

11 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
12 men of the committee, this is a matter that was discussed
13 at some length as Delegate Johnson has suggested at the
14 time I attempted to present the majority recommendation
15 to this Convention, and also by Delegate Johnson as part
16 of his minority report.

17 Frankly, it is the view of the majority that
18 this is a very minor function that will have to be performed
19 by the District Court judges under the proposed majority
20 recommendation in selecting and assigning the responsi-
21 bilities to these commissioners. We do not envision any

1 type of political machine or political hierarchy that
2 these District judges, however so inclined they might be,
3 we hope they will not be, by virtue of the power to ap-
4 point commissioners. It is not that these commissioners
5 will be part-time employees.

6 In the first place, I think it probably will be
7 extremely difficult in some areas to find exactly the type
8 of individual who will accept this type of assignment. It
9 is a troublesome one. The need can occur at any time
10 of the day or night, holidays as well as weekends, and to
11 perform the responsibility efficiently and well, to accom-
12 modate the needs of the District Court, you must have an
13 individual who is amenable to suggestions and advice and
14 counsel from the District judge.

15 Accordingly, it is felt that it would definitely
16 weaken the court structure, administration and efficiency

17 the majority envisions for this judicial article if
18 The appointment, tenure and responsibility of these com-
19 missioners is not entirely and directly to the District
20 judges.

21 This idea is not unique. This is not the first

1 time it has been suggested in a judicial system.

2 To the contrary, it is our information that the
3 so-called three-tier court system in Illinois has in fact
4 become what we understand to be a four-tier court system
5 by virtue of the power delegated to the judges of the
6 three-tier court, the appointment not of magistrates or
7 commissioners but trial judges at the limited jurisdiction
8 level.

9 Therefore, the concept of this whole idea contained
10 in the majority report is not unique. It is not a first
11 time. It is entirely consistent with the progressive
12 thinking in this area.

13 In our humble judgment it gives the court struc-
14 ture which we envision under this majority recommendation
15 the control over these commissioners that is so sorely
16 needed for the efficiency and the uniformity that we hope
17 will be accomplished for the people of Maryland under this
18 proposed judiciary article.

19 Accordingly, I urge you to vote against the
20 amendment.

21 THE CHAIRMAN: Delegate Johnson.

1 DELEGATE JOHNSON: Mr. Chairman, I yield three
2 minutes to Delegate Jett.

3 THE CHAIRMAN: Delegate Jett.

4 DELEGATE JETT: Mr. Chairman, fellow delegates
5 of this Convention, it would be improper for me to speak
6 on this without paying due respect to the Chairman of
7 this great committee who has come forth with this fine
8 argument. In the main I agree with it. I think it is
9 a wonderful step forward for Maryland.

10 I must say, however, that this article as re-
11 spects the commissioners is one which I feel will not
12 only not help the Judiciary but do it terrible harm. I
13 feel that this idea of turning over to our judges the
14 matter of dispensing patronage and of giving out jobs,
15 while on the Bench they dispense justice, they might be
16 charged with dispensing patronage in their chambers. I
17 feel that will subject every judge to unwanted and unneces-
18 sary censure and should subject him to something no judge
19 would want.

20 I submit to you all that no judge I believe
21 would want to drink from this cup, that he would want

1 this cup to pass from him.

2 I would suggest to you further that this is some-
3 thing that cannot fail to take a great deal of judicial
4 attention. It is something that is going to divert the
5 judicial attention from the very demanding job of being
6 a judge and not a dispenser of jobs and not one who is
7 looking over and administering hiring and firing and
8 interviewing and doing all the things required in this
9 job.

10 As for control, in the limited control given
11 these commissioners, their every act would almost inevitably
12 come under the surveillance of the judges.

13 It is my feeling that we, by subjecting our
14 judges to the indignity of having to pick these men, would
15 be doing them the greatest disservice. I say to you that
16 in this area, particularly in this area, where the aver-
17 age citizen has his only contact with justice, and where
18 he sees law working as probably the only contact he ever
19 has with it, that casts any doubt in his mind that that
20 judge sitting on that Bench in those robes is dispensing
21 free justice -- I ask you for the love all of us have for

1 the Judiciary to vote against this giving of power to the
2 judges to appoint their commissioners and in favor of
3 the amendment.

4 Thank you.

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: Mr. Chairman, I yield three
7 minutes to Delegate Dulany.

8 THE CHAIRMAN: Delegate Dulany.

9 DELEGATE DULANY: Mr. Chairman, the word "com-
10 missioners" is new to Maryland Judiciary. It will stand
11 in the place of what we now know as the committing magis-
12 trate. I think many people are not fully aware of
13 what a committing magistrate is, but we in the county are
14 well aware and probably some city residents are also.
15 The committing magistrate is a person to whom a person
16 goes when he wants to swear out a warrant for the arrest
17 of a citizen who has breached the law or committed some
18 offense or caused some offense against the person swear-
19 ing out the warrant. This is a very important office.

20 A warrant of arrest sworn out against a person
21 does make some sort of record against him if the committing

1 magistrate does not know something of the law, many times
2 you can have warrants sworn out that are unjustified.

3 We had before our committee testimony that a
4 warrant for assault was sworn out against a man who was
5 placed in jail pending hearing because his dog killed a
6 neighbor's chicken. At the present time the committing
7 magistrates are political appointees for a two-year term.
8 Their qualifications are practically zero.

9 Under the judicial article as drafted by the
10 committee, the committing magistrates, or commissioners as
11 they are called, would have very limited duties but they
12 are very important duties and they are judicial in nature.
13 They will issue warrants of arrest, they will take collat-
14 eral, for example, when a nonresident of Maryland is picked
15 u p on the highway, he has to post collateral or be placed
16 in jail and not merely sign a ticket like a resident. The
17 committing magistrate would take collateral.

18 The committing magistrate is the person called
19 out of bed in the middle of the night, he is the one who
20 should decide whether a person should be incarcerated
21 pending hearing and he sets bail. These are strictly

1 judicial functions.

2 Also, a committing magistrate is important in
3 family disputes. He can many times resolve disputes
4 without swearing out warrants of arrest. You say that is
5 a nonjudicial officer. You say the judge should not ap-
6 point this type officer. You are being misled. The
7 courts and judges for years have appointed special masters
8 and auditors to hear all sorts of cases in the Equity
9 Courts in particular and report back to the court. No one
10 ever suggested the court should not have this power.

11 THE CHAIRMAN: Delegate Dulany, you have a little
12 less than a half-minute.

13 DELEGATE DULANY: Courts today are charged with
14 a great responsibility in the Criminal Section of the law,
15 particularly under the recent interpretation of the
16 Supreme Court. They are the ones who are finally responsi-
17 ble for the administration of justice and I ask you to
18 vote down the amendment and support the committee on its
19 proposal.

20 THE CHAIRMAN: Before recognizing Delegate
21 Johnson, the Chair desires to acknowledge the presence in

1 the gallery of the Honorable William Hinkle, member of
2 the House of Delegates from the Fourth District of Balti-
3 more County. Delighted to have you with us.

4 (Applause.)

5 Delegate Johnson.

6 DELEGATE JOHNSON: Mr. Chairman, I yield three
7 minutes to Delegate Grant.
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1 THE CHAIRMAN: Delegate Grant.

2 DELEGATE GRANT: My comments on this are
3 essentially the same as Delegate Jett's. I think we are
4 imposing on the judiciary an almost insuperable job.
5 There are some 900,000 cases handled in the courts of
6 inferior jurisdiction as opposed to some 64,000 cases heard
7 in the circuit courts. Obviously the majority of the
8 work in the inferior jurisdictions consists of warrants,
9 traffic tickets and the like.

10 This work is going to be handled by a commis-
11 sioner with some trial supervision in actual conduct of trial
12 a district judge.

13 Actually, the commissioner then is really going
14 to be performing a judicial function. We have not left
15 or burdened the Court of Appeals with appointment of
16 judges of the intermediate court of appeals; we have not
17 burdened the intermediate court of appeals with the appoint-
18 ment of judges of the superior court. We have not burdened
19 the judges of the superior court with the appointments,
20 as is apparently done in Illinois with the judges of the
21 inferior court.

1 I do not think at this point we should burden
2 the judges of the district court with the appointment of
3 another judicial officer. It is a great burden.
4 Apparently he will have to decide everything about him, how
5 long he is going to be there, what his qualifications are,
6 what his pay is, where the money is going to come from,
7 what his retirement is, and so on. It is just
8 simply too much to ask a judge to go out and fill the court
9 room; then come in and sit in and try to dispense justice.

10 THE CHAIRMAN: Delegate Mudd.

11 DELEGATE MUDD: Mr. Chairman, I yield three
12 minutes to Delegate Case.

13 THE CHAIRMAN: Delegate Case.

14 DELEGATE CASE: Mr. Chairman, ladies and
15 gentlemen of the committee:

16 There has been some misinformation given by
17 Delegate Johnson with reference to the newness of this
18 term. I should like to inform the committee just where it
19 came from, who it has been submitted to, what the results
20 have been.

21 The whole idea of the district courts was a

1 result of a report made by the Committee on Judicial
2 Administration of the Maryland State Bar Association,
3 sitting in convention June 20 of last year in Atlantic
4 City.

5 The Committee recommended to the Association
6 that a system of district courts should be formed and
7 also recommended that the job of issuing arrest warrants and
8 other similar functions should be transferred to a new
9 officer called a commissioner. I think it would be
10 instructive to this Committee if I read to you what the
11 Committee on Judicial Administration said to its parent,
12 the State Bar Association at that time. I am quoting from
13 the report."If arrest warrants are to be issued by judges
14 only it is, of course, extremely important that judges be
15 at all times reasonably accessible to the police. This may
16 not always be possible, particularly in rural areas of the
17 State. Therefore, the committee recommends that judges
18 of the district court" -- I emphasize this -- "judges of
19 the district court be authorized to appoint commissioners
20 whose duties generally would be to issue arrest warrants
21 and to accept bail or collateral. It is hoped that the
persons appointed to these positions would be lawyers or

1 have prior legal training and it seems particularly import-
2 ant that the commissioners be appointed by and remain
3 under the immediate supervision of the District Court.
4 In this way their work can be closely observed."

5 That report, ladies and gentlemen, was made
6 in the State Bar Association at a time when it had
7 the greatest attendance in its history in Atlantic City,
8 and after the report was made -- I made that report --
9 the matter was put to a vote. There was but one single
10 voice of dissent in a group of more than 400 people.

11 THE CHAIRMAN: Delegate Case, you have a little
12 over a quarter of a minute left.

13 DELEGATE CASE: So you see, this matter has
14 been before your Bar Association. It has been examined
15 carefully. It has been accepted. I urge, therefore,
16 that this amendment be rejected.

17 THE CHAIRMAN: Delegate Johnson.

18 DELEGATE JOHNSON: Mr. Chairman, may I
19 answer Delegate Case, and still call on my next delegate
20 under controlled time?

21 THE CHAIRMAN: After Delegate Mudd has
called on somebody you may.

1 You still have time.

2 DELEGATE JOHNSON: Perhaps I will use the
3 opportunity then under controlled time to answer Delegate
4 Case and call upon now and yield three minutes to Delegate
5 Harkness.

6 DELEGATE HARKNESS: Mr. Chairman, Fellow
7 Delegates:

8 The hour is growing late, and I am sure we all
9 don't want to hear too much more discussion about the matter.
10 The minority report supports the minority position. Several
11 delegates have spoken in behalf of the amendment. I think
12 quite simply I want to say this:

13 It is hard for me to perceive how the
14 appointment of a commissioner is a judicial function.
15 It is true that the administration thereof in his duties
16 may pertain to the judiciary. What the amendment provides
17 by rule, that shall be spelled out, but the amendment fur-
18 ther provides that the number, qualifications, tenure and
19 compensation should be determined by the General Assembly
20 or determined in a manner prescribed by law.

21 We feel that the appointment is strictly a

1 legislative matter, and as Judge O'Donnell from the Supreme
2 Bench in Baltimore said when he appeared before our committee,
3 that the entire subsection should be governed by legisla-
4 tion, not by the Constitution.

5 One further point: Here again we see creeping
6 into section after section more power, unrestricted, being
7 given to the judiciary. We feel that is unnecessary, that
8 it is against the minority's philosophy of government
9 because the best government is the government that is clos-
10 est to the people.

11 I say very briefly in closing, we have three
12 branches of government: The Executive; let the executive
13 execute. We have the General Assembly; let them legislate.

14 In conclusion, let the judges adjudicate and
15 not appoint.

16 THE CHAIRMAN: Delegate Mudd, you have left six
17 and a half minutes to allocate as you wish.

18 DELEGATE MUDD: I would like to yield two
19 minutes at this time to Delegate Lord.

20 THE CHAIRMAN: Delegate Lord.

21 DELEGATE LORD: Mr. Chairman, ladies and

1 gentlemen of the Convention:

2 I oppose wholeheartedly this amendment. I
3 think the reasons will become clear if we look at the
4 functions that are set out in section 5.11 to be performed
5 by the commissioners."

6 He shall exercise only those powers with re-
7 spect to warrants of arrest, collateral, and incarceration
8 pending hearing, and then only as prescribed by rule."

9 Now, these are functions in the absence of
10 commissioners that would be performed and would have to be
11 performed by the district judge in question. You must
12 realize this and treat the commissioners and the judges
13 as a unit; in the absence of the commissioner, the job
14 would have to be done by the judge. I say that this indicates
15 strongly that the commissioner must be answerable directly
16 to the judge, because any activities that were not con-
17 sistent with the behavior of the judge would be vested
18 upon that judge.

19 Delegate Dulany already mentioned the fact
20 that there is a great deal of discretion in issuing of
21 warrants of arrest. I would agree with him wholeheartedly.

1 I submit if a commissioner has a completely
2 different theory with respect to the issuance of these
3 warrants from the judge for whom he works, you would be
4 creating an unconscionable situation in the courts.

5 I think this is no different from the right of
6 a judge to hire his secretaries, to hire his law clerks or
7 appoint masters. I see no political pressures. This
8 is purely ministerial duties to take pressure off the
9 judge. I think it is a power that must be left with him.

10 THE CHAIRMAN: Delegate Johnson, you have left
11 four and a quarter minutes.

12 DELEGATE JOHNSON: Mr. Chairman, I yield two
13 minutes to Delegate Hickman.

14 THE CHAIRMAN: Delegate Hickman.

15 DELEGATE HICKMAN: Mr. Chairman, Ladies
16 and Gentlemen of the Committee:

17 I would like to reemphasize that the minority
18 report is not a dissent. We think that the present Consti-
19 tution needs an improvement.

20 We think that the majority report goes too far.
21 We have tried to take a moderate view. We want to come

1 out of this Convention with a Constitution which is an
2 improvement over the Constitution we have at the present
3 time, but we want to come out with a Constitution that is
4 going to be accepted by the people of this State.

5 I submit to you that the people of the State
6 would not understand having the judges appoint these non-
7 judicial people. Actually, in committee we decided
8 they need not even be lawyers.

9 We do not ask that these people be elected, but
10 that the legislature have the power to appoint them. We
11 think this is one area in which we can temper the situation
12 so that people will feel they have some part in the judicial
13 system. We think it will do no harm and that the suggestion
14 we make will improve the judicial branch as much as the
15 suggestion that was made by the majority.

16 THE CHAIRMAN: Delegate Mudd, you have three
17 and a half minutes.

18 DELEGATE MUDD: I yield three minutes to Delc-
19 gate Marvin Smith.

20 THE CHAIRMAN: Delegate Marvin Smith.

21 DELEGATE M. SMITH: Mr. Chairman, early in the

1 game I was approached with reference to a plan for appoint-
2 ment of the commissioners by the Governor, subject to
3 senate confirmation, it being pointed out that this might
4 make the Constitution and the judicial article more palat-
5 able to certain of the political fraternity.

6 I am frank to admit, like the delegate who sits
7 on the other side of the room, I am a part-time politician.
8 After I analyzed this plan, I could not and will not sup-
9 port this amendment. I am concerned about the people, and
10 I am concerned about people insofar as the administration
11 of justice is concerned. I have seen situations with our
12 present part-time magistrates where a poor innocent boy --
13 I wouldn't represent anything else -- accused of fighting
14 or some such similar thing, the magistrate says, \$1,000
15 bond. You bring in his parents who own their home, worth
16 a couple thousand dollars, and the magistrate says, No,
17 this has to be cash bond.

18 You explain to him that he set a thousand, they
19 own their home, that should be adequate.

20 "In that case, I will set the bond so high he
21 can't get out."

1 You have to threaten him with a writ of habeas
2 corpus.

3 Under the system proposed by this amendment
4 there would not be control, there would not be supervision
5 by the courts. I submit to you, sir, that it is essential
6 that these commissioners be under the control of the
7 courts from the standpoint of training, from the standpoint
8 of supervision, if the rights of the public are to be
9 protected.

10 THE CHAIRMAN: Delegate Johnson, you have three-
11 quarters of a minute.

12 DELEGATE JOHNSON: I will not put an imposition
13 upon our next speaker, and speakers, for that matter, and
14 ask that these delegates please comment under the uncontrolled
15 time. I will take this opportunity, if I may, to answer
16 the statement made by Delegate Case.

17 I realize, of course, that Delegate Case was a
18 member of the Constitutional Convention Commission, and I
19 realize he is a good advocate. I do not take offense at
20 the statement where he suggested that I suggested that the
21 term "commissioner" is a new term. I didn't suggest,

1 Delegate Case, that the term "commissioner" is a new
2 term. I suggested that the appointment of commissioners
3 by the judiciary has not been tolerated in any other State
4 constitution.

5 THE CHAIRMAN: You have one-quarter minute,
6 Delegate Johnson.

7 DELEGATE JOHNSON: I sincerely hope and trust
8 that Maryland will remain in the mainstream.

9 THE CHAIRMAN: Delegate Mudd, you have one and
10 one-half minutes.

11 DELEGATE MUDD: Do you desire to speak in
12 opposition to the amendment, Delegate James? I am happy
13 to yield the minute and a half to Delegate James.

14 THE CHAIRMAN: Delegate James.

15 DELEGATE JAMES: I would like to say if you want
16 to protect people, if you want to protect the public,
17 protect their rights, ^{you} want people in office who know exactly
18 what they are doing, what the peoples' rights are, who can
19 stand between the individual and injustice.

20 The moment you give a man a right to issue a
21 warrant, the moment you give an individual the right to

1 say whether he can be arrested or not, this is a very,
2 very serious function. I have been very close to this
3 function. I have been a trial magistrate for a couple of
4 years. I have had a little bit to do with appointing
5 some of these committing magistrates.

6 I would like to say if there is anything that
7 can be done to reform this system it should be done.

8 I would also like to say that the committing
9 magistrate or commissioners, as we now call them, should
10 be part and parcel of the judicial administration, under the
11 supervision and working in close cooperation with the
12 district court. This would make a sensible system, just
13 as the circuit courts now have power to appoint auditors,
14 masters in chancery, all the officials who form part and
15 parcel of the judicial system.

16 To place this matter back in the hands of the
17 legislature is merely a perpetuation of the present system
18 and if there is anything that needs reforming in the
19 present system of courts, especially in the lower courts,
20 it is the committing magistrate system, which is disorderly
21 and does not have good principles of administration.

1 THE CHAIRMAN: Under the debate schedule there
2 is now available two minutes of uncontrolled but limited
3 debate.

4 Does any delegate desire to speak in favor of
5 the amendment?

6 Delegate Della.

7 DELEGATE DELLA: Mr. Chairman and Fellow Dele-
8 gates:

9 Looking over the report of the committee, I find
10 nowhere do they provide for an examiner or master. To me
11 a master is more important than a commissioner. I am
12 informed a commissioner does not have to be a lawyer.
13 Yet we all know examiners and masters must be.

14 Nothing in this report shows that a master must
15 be appointed in this Constitution. I don't know whether
16 we are going to have masters or whether we are going to have
17 examiners, but the committee did see fit to name commis-
18 sioners.

19 For all purposes I don't think he has to be
20 a lawyer. He could be a layman. He could accept bonds.
21 He is a clerk, so to speak.

1 Yet the General Assembly has the position of
2 master and examiner.

3 We gave to the General Assembly that power, and
4 that power has been transferred over to the courts.

5 The courts named the examiners and the masters.

6 I can understand the Maryland Bar Association
7 fighting for a commissioner. Probably that is the only way
8 they are going to get lawyers there. They don't need them.

9 Unfortunately, after reading the Bar report,
10 there are over 80 lawyers in this Convention. If there is
11 ever a conflict of interest it might be in this Convention
12 by lawyers fighting for positions in the so-called judi-
13 ciary system.

14 But if they were so interested in naming jobs,
15 why didn't they name the examiners? The examiner takes
16 testimony. He makes recommendations to the court on what
17 should be done.

18 So, Mr. Chairman, inasmuch as this is a position
19 that can be created and the appointing power can be dele-
20 gated over to the court if the General Assembly sees fit,
21 I would have to be in favor of the proposal offered by

1 Mr. Johnson and his colleagues in Amendment 13.

2 THE CHAIRMAN: Does any delegate desire to
3 speak in opposition to Amendment 13?

4 Delegate Marion.

5 DELEGATE MARION: Mr. Chairman, the extremely
6 important job of being a commissioner will be a patronage
7 job, political patronage job, only if we treat it as much.
8 Under the present situation they are so treated and as
9 Senator James has so aptly pointed out, it is wrong, and
10 it needs to be reformed.

11 Under the situation that prevails in the
12 United States District Court, where District Court
13 judges appoint United States Commissioners, it is not
14 so treated and therefore is not a political patronage job.

15 It has been said here before that the life of the
16 law is not logic, but experience. The experience in this
17 regard, I submit, is a sorry one. Under the present situa-
18 tion which is essentially what the minority proposes we
19 continue, we have, according to the figures submitted
20 by the Institute for Judicial Administration, which reviewed
21 our State Court system, at least 328 committing magistrates

1 in the State of Maryland, excluding Allegany County, for
2 which no figures were available. Of that 328, 200 are in
3 Baltimore County alone. To show you that there is no need
4 for this kind of thing, only 25 are said to exercise the
5 function of their office. The other 175 are what that re-
6 port describes as "honorary."

7 I submit we need to change this system and urge
8 defeat of this amendment.

9 THE CHAIRMAN: Does any delegate desire to speak
10 in favor of the amendment?

11 Delegate Siewierski.

12 DELEGATE SIEWIERSKI: Mr. Chairman, I would
13 like to suggest to the members of the committee what the
14 duties of a commissioner are probably will be set out spe-
15 cifically in the Constitution, or they will be assigned
16 specific duties by the court. Hence, they are not so-called
17 "assistant judges" or "assistants to the District Court judge."
18 They are a separate officer; perhaps it would be a Constitu-
19 tional officer, as recommended by the majority, and also
20 by the minority.

21 I therefore feel that their selection, be it

1 appointment, election or however you wish to do, should be
2 considered in the same light as the selection of a judge.
3 Here we are having two separate offices. I don't believe
4 there is any direct connection of authority or responsibility
5 between the commissioner and the judge himself. There is
6 a responsibility, sure, perhaps, between the commissioner
7 and the judicial system, but not directly between the
8 commissioner and the judge.

9 THE CHAIRMAN: Does any delegate desire to
10 speak in opposition?

11 Delegate Hopkins.

12 DELEGATE HOPKINS: Mr. Chairman, I am becoming
13 quite alarmed by some of the expressions by some delegates
14 that should the judges be selecting the commissioner, they
15 would become dispensers of patronage in a not very flatter-
16 ing sense.

17 I have respect for the present bench and all
18 future judges, and I submit that in selecting these people
19 to work with them and help carry out the duties of their
20 office that they will do this with great care, and I
21 don't think we should be assuming they are going to

1 participate in some kind of a greenback operation.

2 This reminds me a little of the problem we had
3 in the Legislative Committee. We did our best to figure
4 out a way to assure the election of the most able legisla-
5 tors possible, and after that and actually following it, we
6 did not want to hamstring them, but wanted things to be
7 as flexible as possible, so they could carry out the
8 responsibilities with which they would be charged.

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2 I feel the same thing applies here. A little
3 later on we will talk about the best way to get the
4 most able judges and having once secured them, I don't
5 think we want to hamstring them. I would think we
6 should let them have as much flexibility as possible in
7 carrying out their very heavy responsibilities, and this
8 would include selecting the personnel to work in their
9 offices.

10 Therefore, I urge you to vote against the amend-
11 ment.

12 THE CHAIRMAN: Does any other delegate desire
13 to speak in favor of the amendment?

14 Delegate Mitchell?

15 DELEGATE MITCHELL: Mr. President, I speak in favor
16 of the amendment. There are other ways to improve the quali-
17 ty of those who serve our courts than by the political patron-
18 age, either of political officials or judges. All of us
19 know the quality of the judiciary needs to be improved
20 otherwise we would not have the article that we have
21 before this Constitutional Convention.

Our judicial system is not perfect. It is

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2 because the citizens have come up against the arbitrari-
3 ness of some of the appointed judges and the political
4 activity of others that these changes have been sought.

5 I want to say again that certainly the state
6 civil service system offers an opportunity for the
7 appointment of qualified commissioners. Moreover, I still
8 feel as many of the delegates have voted here today that
9 we must not put too much power in the hands of any one
10 branch of government, be it judiciary or what not. I feel
11 that this amendment has great merit and I speak for it.

12 THE CHAIRMAN: The Chair recognizes Delegate
13 Cicone to speak in opposition to the amendment.

14 DELEGATE CICONE: I am a non-judicial member
15 of our committee. I think yesterday I was was referred
16 to as a spouse. Maybe that makes me a quasi-judicial.

17 For many weeks I have been listening to testimony,
18 people we have heard, as to inferior courts, I think that
19 name probably is indicative of a situation that is
20 existing now in our lower court systems and especially
21 as what I have learned as the magistrate court level.

I heard stories that they would be funny if
they were not so tragic, how some forms of justice or

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2 alleged justice is dispensed.

3 This happens, as I see it, to the greatest
4 number of people that are exposed to these particular
5 magistrate courts. I can imagine the impression they
6 take away of our administration of justice. These
7 commissioners I feel are a step in the right direction to
8 come under the court system. We have been down here
9 trying to draw a sharp definitive line between our branches
10 of government. All day today I have listened to phrases
11 that I certainly do not agree with, power grabs.

12 Maybe it just depends on which side of the fence
13 you are sitting. Witness after witness asked us, urged
14 us, very competent members of our legislature asked us
15 to make reforms at this level. They said if we did
16 not do it the legislature would not.

17 If reform was needed up to this time and the
18 legislature had the power to do it, why hasn't it been
19 done up to this time?

20 Then I think we should take it out of the
21 legislature and put it in the judicial.

 Draw a line where the responsibility will lie.

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3 As I was listening to the legislative article,
4 nowhere in that article did it suggest that any other
5 branch elect its officers or employ any of their staff.
6 That would help them with the administration of the
7 legislature.

8 THE CHAIRMAN: You have a little less than one-
9 half minute.

10 DELEGATE CICONE: It is inconceivable to me
11 we would give a judge the job of administering his court
12 and then not allow him to pick the most qualified people
13 to help him do the job he must do; otherwise, there
14 would be no responsibility. To whom would these commissioners
15 be responsible, if not to the court, to the legislature?
16 I submit to you this chain of responsibility should not be
17 broken. I think each branch should be able to keep its
18 own house in order.

19 I urge you to vote down this amendment.

20 THE CHAIRMAN: Delegate Weidemeyer, do you
21 desire to speak in favor of the amendment?

You may proceed.

DELEGATE WEIDEMEYER: I want to point this out:

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3 That when I hear it said that the district judge has to
4 select these men to help him do his job. I want to point
5 out, Mr. President, that the job of any judge is to
6 adjudicate. The job of the judge is not to go out and
7 issue warrants. Lord help this country if our judges go
8 out and say who must be brought in before them to be
9 tried.

10 I know when I was magistrate I had some policemen
11 tell me they were not satisfied with my decisions. I
12 said your job is to look after violations; my job is
13 to try the case. So therefore, I think that we are going
14 off on the wrong track if we say these committing magis-
15 trates are there merely to help the judges. They are
16 there to perform a separate function. That is to issue
17 warrants and things like that. They have nothing to do with
18 the trail of the case. I suggest to you that anyone
19 who makes a mistake in issuing a warrant could just
20 as easily have made it because he was appointd by the
21 judge as if he were appointd by the Govenror.

I think when we get into where the judges are
making appointments then I think we are eroding at
an old principle of our state government, the clear

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2 separation of powers. I think when we start in a
3 small way we can gradually enlarge into a larger way.
4 I think if you like the principle, if you think the
5 principle of separation of powers is good, you ought not
6 to erode at it by these small matters of having the
7 district judges appointing these committing magistrates.

8 I therefore think this is a well-taken amendment.
9 I hope you approve of it.

10 THE CHAIRMAN: The Chair recognizes Delegate
11 Henderson to speak in opposition. Sorry, Delegate Harry
12 Taylor to speak in opposition.

13 DELEGATE H. TAYLOR. Will the chairman of the
14 Judiciary Committee yield to a question.

15 THE CHAIRMAN: Delegate Mudd, do you yield?

16 DELEGATE MUDD: Yes, sir.

17 THE CHAIRMAN: Delegate Taylor.

18 DELEGATE TAYLOR: Do they have this commissioner
19 system on the federal level?

20 DELEGATE MUDD: Yes.

21 DELEGATE H. TAYLOR: Who appoints commissioners
there?

THE CHAIRMAN: Delegate Mudd?

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2 DELEGATE MUDD: I was one many, many years ago and
3 at that time I was appointed by Judge Coleman.

4 THE CHAIRMAN: Delegate H. Taylor.

5 DELEGATE H. TAYLOR: Has the system worked
6 satisfactorily on the federal level as far as you know?

7 THE CHAIRMAN: Delegate Mudd.

8 DELEGATE MUDD: Are you asking me to judge my
9 competency?

10 THE CHAIRMAN: Delegate Harry Taylor.

11 DELEGATE H. Taylor. The ones appointed since
12 you left.

13 THE CHAIRMAN: Delegate Mudd.

14 DELEGATE MUDD: You have a very distinguished
15 one in your county now, Commissioner Burgess. I
16 think he does it well.

17 THE CHAIRMAN: Delegate Raley, for what purpose
18 do you rise?

19 DELEGATE RALEY: To speak in opposition.

20 THE CHAIRMAN: Does anyone desire to speak in
21 favor?

Delegate Raley, you may proceed to speak in

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2
3 opposition.

4 DELEGATE RALEY: Mr. Chairman, I am a State
5 Senator and had some experience with the magistrate.
6 The system was atrocious. I remember I tried at one
7 point to get a training period but the big problem was
8 nobody controlled these people.

9 It seems to me the Commissioners there set up
10 are going to be an arm of the court so they should be
11 properly controlled by the court, properly trained by the
12 court. This is the only thing that can be done to change
13 the system.

14 I think this amendment should be defeated
15 because I believe this would be a real step forward in
16 this state.

17 THE CHAIRMAN: Any other delegate desire to speak
18 in favor of the amendment?

19 Delegate Key, do you desire to speak in favor?

20 DELEGATE KEY: I don't know. I have a question
21 of either Delegate Mudd or Delegate Johnson. It doesn't
matter.

THE CHAIRMAN: You name it.

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2 DELEGATE KEY: Which is in order right now?

3 THE CHAIRMAN: Do you desire to direct your inquiry
4 to Delegate Mudd?

5 DELEGATE KEY: Yes.

6 THE CHAIRMAN: Do you desire to respond to an in-
7 quiry?

8 DELEGATE MUDD: It may be out of order.

9 THE CHAIRMAN: Delegate Key. Delegate Mitchell
10 inferred that this article, this amendment, rather,
11 would permit selection of these commissioners by the merit
12 system? I know that now there are many employees of
13 Baltimore City courts. Do you know whether any of these
14 are appointed by the merit system or are they all appointed
by the court.

15 DELEGATE MUDD: The committing magistrates in
16 Baltimore City now; is that what you mean?

17 DELEGATE KEY: No, I am speaking now of just
18 the whole court system in Baltimore City. Are they under the
merit system?

19 THE CHAIRMAN: Delegate Mudd.

20 DELEGATE MUDD: I don't know I can fully answer
21

1
2 your question.

3 It is my information, however, from the
4 testimony before the committee that some employees perhaps
5 of the Clerk's Office or Register of Wills Office are
6 under the city merit system, is that right?

7 THE CHAIRMAN: Delegate Hargrove, Delegate Mudd
8 addressed a question to you. Can you answer it?

9 DELEGATE HARGROVE: The employees of the
10 People's Court of Baltimore City are under the merit
11 system. I might add the Constitution provides for the
12 appointment of all employees of that court by the
13 chief judge of the court.

14 The Municipal Court of Baltimore City, also,
15 all of the employees are under the Baltimore City Merit
16 System and again I believe the Constitution provides for
17 the appointment of clerks and court officials by the
18 judge of the court.

19 THE CHAIRMAN: Do you have further questions?

20 DELEGATE KEY: No.

21 THE CHAIRMAN: Any further debate?

 Delegate Willoner?

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3 DELEGATE WILLONER: Mr. Chairman, I sadly rise, I
4 guess, to support the committee position and in opposition
5 to the minority's amendment.

6 It seems to me the issue here, unlike the other
7 issues we decided today, is not the issue of whether or
8 not this is a power grab by the courts, but whether or not
9 we can improve what is the single worst situation in our
10 courts in Maryland today.

11 There is no area that needs more reform than the
12 J.P. system we have. The condition could have been
13 remedied in the last hundred years. It has not been.
14 This is an attempt to do so. Very limited jurisdiction
15 given the commissioner, it seems to me this would be
16 a safe approach to permit the district judge to appoint
17 the commissioners in his district.

18 THE CHAIRMAN: Time on the debate schedule having
19 just about expired, there being only a minute or two --

20 Delegate Kahl, do you desire to speak?

21 DELEGATE KAHL: In favor of the amendment, yes.

THE CHAIRMAN: Just a second. You have two
minutes.

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3 DELEGATE KAHL: I want to emphasize it is our
4 intention to strengthen one branch so much we set it
5 completely away from our system of checks and balances.
6 I think this is, the committee's recommendation is pecking
7 away at our system of checks and balances and the public
8 as well.

9 I would like to point out also that in the commit-
10 tee's recommendation the commissioners serve at the pleasure
11 of the chief judge. Commissioners are not committing
12 magistrates. These are new jobs.

13 The only thing our amendment is trying to do is
14 give them tenure. They might, they probably will be under
15 the merit system. They should not be at the disposal
16 of the judge to appoint and dismiss at his pleasure.

17 THE CHAIRMAN: The opposition has two minutes.
18 Does any delegate desire to speak in opposition?

19 DELEGATE GALLAGHER: Mr. Chairman, ladies and
20 gentlemen, I think in opposing the amendment, I should
21 point out that the level of the judiciary which most
people encounter during their lives is this particular
plateau. It would seem to me that we should guarantee

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2 our service, that the impression of the judiciary which
3 people meet at this particular level should be a good
4 one. I think in order to do that we have to eliminate
5 the political patronage system which now goes hand in
6 hand with this particular level of the judiciary.

7 Consequently, I would urge that the control of
8 the appointment not be placed in the hands of the General
9 Assembly where the jobs are parceled out on a patronage
10 basis and where the individual pressure from the individual
11 legislator who has so many appointments of committing
magistrates can interfere with the due process of justice.

12 I would submit it is a far better thing to remove
13 from the political arena this particular aspect of the
14 judicial activity and put it in the hands of disinterested
15 parties. For that reason, I would urge defeat of the
16 amendment.

17 THE CHAIRMAN: The time allowed for debate
18 under the schedule having expired we are ready for a vote.
19 Before taking the vote, I ask the clerk to sound the
quorum bell.

20 For what purpose does Delegate Gilchrist rise?
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2 DELEGATE GILCHRIST: Point of personal privilege.

3 THE CHAIRMAN: State the privilege.

4 DELEGATE GILCHRIST: In order to protect the
5 reputation of Allegany County against the defamation
6 perhaps by Delegate Marion on our not having submitted
7 information as to the number of committing magistrates, the
8 reason there is no information is because in Allegany
9 County there are no committing magistrates.

10 THE CHAIRMAN: Thank you, Delegate Gilchrist.
11 For what purpose does Delegate L. Taylor rise?

12 DELEGATE TAYLOR: Point of information.

13 THE CHAIRMAN: State your question.

14 DELEGATE L. TAYLOR: I am sort of in doubt on
15 the minority's recommendation. It seems they are saying
16 this appointment of commissioners should be under the
17 merit system.

18 I am not clear on this particular matter. I do
19 not know how to vote.

20 THE CHAIRMAN: Delegate Taylor, I think the
21 debate time has expired. I think the Chair can say to you
that as I understand the point of the minority, there is
no provision in their amendment for appointment under

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3 the merit system but if the appointment is by or pursuant
4 to law, I take it their point is that the legislature
5 in passing the law could provide that the appointment
6 be under the merit system. Is that a fair statement,
7 Delegate Kahl? I ask her because she
8 made the reference to which Delegate Taylor mentioned.

9 DELEGATE JOHNSON: Yes, Mr. Chairman, that
10 is essentially correct. We sincerely believe --

11 THE CHAIRMAN: I do not think I can permit
12 you further debate. I think I have extended it far enough
13 by permitting the answer.

14 DELEGATE L. TAYLOR: Delegate Hargrove was
15 saying that the system in Baltimore allows for merit
16 system and appointment of the staff by the judge.
17 Is this correct?

18 Is this what he is saying?

19 THE CHAIRMAN: I understood Delegate Hargrove
20 to say that the constitution authorized the chief judge
21 of the people's court to appoint clerical personnel in
that court and the constitutional amendment providing for
the municipal court authorized the chief judge to appoint

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2 clerical personnel in that court, but that as a matter
3 of fact, clerical personnel in both courts serve under
4 the merit system, is that correct, Delegate Hargrove?

5 DELEGATE HARGROVE: That is correct.

6 THE CHAIRMAN: Before taking the vote
7 on the question, let me make one statement to Delegate
8 Chabot who seems to have disappeared.

9 Delegate Chabot sent me a note posing a
10 parliamentary inquiry as to an amendment which he desired
11 to offer which could perhaps have been put in by way of
12 an amendment to this amendment or in some other way.

13 I think it would be most confusing to put it
14 in as an amendment to this amendment. I think it is
15 possible that his amendment could be considered regardless
16 of which way the vote on Amendment 13 goes. I will
17 afford him an opportunity at the proper time.

18 The question arises on Amendment No. 13, a vote
19 Yes is a vote in favor of the amendment; a vote No is a
20 vote against. Cast your votes.

21 Have all delegates voted? Does any delegate
desire to change his vote?

The clerk will record the vote.

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3 There being 36 votes in the affirmative, and 93
4 in the negative, the motion is lost, and the amendment
5 is rejected.

6 The pages will please distribute Amendment
7 AN. The Clerk will read the Amendment. It will be numbered
8 Amendment No. 14.

9 MR. QUILLEN: Amendment No. 14 to Committee
10 Recommendation No. JB-1, by Delegate Grant.

11 On page 4 Section 5.11 Commissioners strike out
12 the last sentence on lines 1 through 4 and insert in lieu
13 thereof the following: "Commissioners may exercise such
14 power as prescribed by rule."
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1 THE CHAIRMAN: Is the amendment seconded?

2 (Whereupon, the amendment was seconded.)

3 THE CHAIRMAN: The amendment is seconded.

4 The Chair recognizes Delegate Grant to speak to
5 the amendment.

6 DELEGATE GRANT: I will speak just briefly to
7 this amendment. I hope that we do not get into 40 minutes
8 of debate again.

9 Essentially the amendment simply says that
10 instead of the commissioners being limited to the four
11 powers set forth -- that is, arrest, bail, collateral,
12 and incarceration pending hearing -- they may exercise
13 such power as prescribed by rule. It would appear unwise
14 to fix for all time in the future that an officer set up
15 by the Constitution may issue only four pieces of naper.
16 Times will change, requirements will change, qualifications
17 of personnel will change, the necessities will change.
18 This simply means that the commissioners will exercise
19 such power as may be prescribed to them by rule of the
20 court.

21 It would mean commissioners in rural areas may

1 be required to exercise a very different power. It may
2 mean a commissioner in a rural area would have to be of
3 necessity of sufficient qualifications to issue a search
4 warrant. The same necessity might not prevail in an
5 urban area.

6 I would normally ask the committee if they would
7 accept this recommendation, but in view of the primrose
8 path which I led Delegate Mudd down the last time I
9 would not do that. I would simply urge you to vote to al-
10 low the commissioners a broad power.

11 THE CHAIRMAN: The Chair recognizes Delegate
12 Mudd.

13 DELEGATE MUDD: Mr. Chairman, ladies and gentle-
14 men of the committee, I appreciate the kind remarks of
15 Delegate Grant and certainly I would be most grateful if
16 I could, consistent with the committee recommendation, con-
17 cur in his proposed amendment.

18 We admitted in our initial presentation we were
19 to the best of our ability recommending adoption by this
20 Convention of an over-all judiciary article that did
21 contain in some instances guidelines which we thought

1 would be helpful in the administration and functioning of
2 an efficient Judiciary.'

3 These limitations on the actions and powers of
4 the commissioners, spelled out in the last sentence of
5 5.11, are intended to limit the function of these part-
6 time nonlawyer members of the Judicial Branch so to speak,
7 if we may put them in that category.

8 It is the considered opinion of the majority of
9 the Committee on the Judicial Branch that the functions
10 and powers of these commissioners should be limited and
11 that the best way to keep the uniformity and court struc-
12 ture within proper spheres of activity was to suggest guide-
13 lines to the court in rule-making power governing the
14 function of the commissioners.

15 I therefore reluctantly oppose the position of
16 my good friend, Delegate Grant, but must necessarily urge
17 the defeat of this amendment consistent with the consid-
18 ered opinion and majority recommendation of our committee.

19 THE CHAIRMAN: Is there any other delegate who
20 desires to speak in favor of the amendment?

21 Delegate Clagett.

1 DELEGATE CLAGETT: Mr. Chairman, this amendment
2 I think came as a result of questioning of the chairman
3 of the committee yesterday afternoon. It is in line
4 with the questions at that time with respect to qualifi-
5 cations. If the qualifications of the commissioners are to
6 be set by rule, and we heard Delegate Case a few minutes
7 earlier this afternoon indicate that before the Bar Associ-
8 ation, recommendation of the committee was that where
9 possible these commissioners would be lawyers.

10 Ultimately, as time and necessity dictate, the
11 qualifications of these commissioners will be quite high.
12 There is no reason to anticipate that they may not be
13 sufficiently high to justify the responsibility of issuing
14 search warrants.

15 I cannot but think in these terms. Where the
16 case load on the District judge is going to be so heavy
17 in a community that if you routed him out of bed at two
18 or three o'clock in the morning in order to issue a
19 search warrant and keep him up two or three hours, then
20 put him on the Bench at ten o'clock the next morning, or
21 earlier, he is going to be a rather sleepy judge. He is

1 going to have a great deal of difficulty in properly ad-
2 ministering the responsibilities of that court.

3 There is no reason in the world why the powers
4 of these commissioners should not be flexible, should not
5 be increased in addition to those specifically assigned
6 in the constitutional language here. By confining to
7 those powers only, we tend to straitjacket rather than
8 encourage flexibility. By this amendment I think we have
9 the flexibility, but we have the same thought.

10 THE CHAIRMAN: Does any delegate desire to speak
11 in opposition?

12 Delegate Hargrove.

13 DELEGATE HARGROVE: Mr. Chairman, I think the
14 intention of Delegate Grant and also Delegate Clagett
15 might be a worthwhile one. However, I think the amendment
16 is an extremely dangerous one. We have set out in this
17 Convention to certainly strengthen the courts. We have
18 given power to the judges to administer justice.

19 I think here we are attempting to permit the
20 judges to delegate those powers to officers whose training
21 certainly we do not take to be the same as a District

1 Court judge. I could visualize as Delegate Clagett sug-
2 gests that a District Court, if overburdened with work
3 with appointing a commissioner to hear Traffic Court cases.
4 This is not the function of a commissioner. It was never
5 intended to be the fu nction of a commissioner. The com-
6 mittee intended very definitely to restrict the commis-
7 sioner's power. His power is such that he can arrest,
8 put in jail, or release a person for the commission of a
9 crime. Should a person of this stature be given additional
10 authority, I would suggest that it should take a consti-
11 tutional amendment to do so and let the people make the
12 determination.

13 I therefore would suggest that we defeat this
14 amendment.

15 THE CHAIRMAN: The Chair recognizes Delegate
16 Scanlan to speak in favor of the amendment.

17 DELEGATE SCANLAN: I think Mr. Clagett said it
18 all. I would just like to reiterate what he said and
19 point out that contrary to what Mr. Mudd indicated, you
20 are not putting guidelines in the Constitution here,
21 you are putting express limitations. I think that

1 Delegate's Proposal has the advantage that when time and
2 experience indicate the commissioners can be entrusted
3 with other duties in addition to the ones the committee
4 has in mind, they should be given that power when, in the
5 judgment of the court, they are ready for it without
6 necessity of amending the Constitution every time you want
7 to give a particular set of commissioners in a particular
8 area greater duties than they heretofore had.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Bothe to speak in opposition.

11 DELEGATE BOTHE: Mr. Chairman, I would suggest
12 that we should not look to the addition of the other
13 powers in this part-time office which may not even be
14 filled by members of the Bar, but that we will be looking
15 in the long run to the abolition of the office when the
16 amount of judicial business in the more sparsely populated
17 areas of the state increases to the extent that full-
18 time District Court judges will be available in every
19 community.

20 I think that it is a dangerous matter to place
21 even the powers that have been put by this section in

1 the hands of people who may be of no higher quality than
2 the committing magistrates whom we all have heard much
3 about today.

4 I am rather surprised, for instance, at the
5 arguments of my good friend Delegate Clagett that it might
6 be perfectly all right to allow a nonjudicial or nonjudge
7 individual, let the judge sleep, let the policeman wake
8 up one of these fellows, let him ransack some fellow's
9 home on a search warrant which he may not comprehend. I
10 would point out in many search and seizure cases it has
11 not only been required that a judge sign the warrant, but
12 in many instances that a judge of a higher court perform
13 this function.

14 That is how precious the right to be free from
15 search and seizure is. I suggest we leave the language
16 as it stands and hope that it is not abused. I am not
17 so sure it will not be.

18 THE CHAIRMAN: Any delegate desire to speak in
19 favor?

20 Delegate Carson.

21 DELEGATE CARSON: Mr. Chairman, the present

1 section 5.11 will permit the commissioners to exercise the
2 power of issuing warrants of arrest as prescribed by rule.

3 It seems to me that if a commissioner may issue a warrant
4 of arrest that he certainly then may also issue possibly
5 a warrant for search or for seizure.

6 When your liberty is taken away, you cannot
7 have anything else taken away but your life, but just
8 searched is a lesser invasion of privacy, I think Mr.
9 Grant's amendment is meritorious, I do not know if it
10 should be or should not be. These commissioners should be
11 given more power than specified here. But I suggest the
12 courts to whom we entrust the whole area of this now cer-
13 tainly will advisedly make that decision, and I urge you
14 to vote in favor of the amendment.

15 THE CHAIRMAN: Any other delegate desire to
16 speak on this situation.

17 Delegate Dukes.

18 DELEGATE DUKES: Mr. President, as I understand
19 the thrust of the amendment, it would provide a greater
20 degree of flexibility to future power that might be
21 desirable in the commissioners. Obviously flexibility is

1 a worthwhile objective and certainly the committee could
2 recommend, and we could have adopted, a provision that
3 would simply establish Court of Appeals and such other
4 courts as the legislature might wish to enact. Having to
5 pass that pinnacle of flexibility, we are now faced
6 with every second on reaching some sort of compromise be-
7 tween flexibility on one hand and reasonable restriction
8 on the other.

9 It occurred to me in this case that the commis-
10 sioner, if he is given the total power or possibility of
11 total power, this amendment would have him become the
12 dumping spot for every undesirable function of District
13 Court. We would be faced not with a four-tier system of
14 courts but a five-tier in which the commissioner becomes
15 all the things he is under the committee recommendation
16 plus all those things which the District Courts usually
17 give him in terms of master or terms of other specialty
18 functions which he should not have and which I feel he
19 should be restricted from having.

20 THE CHAIRMAN: Any other delegate desire to speak
21 in favor of the amendment?

1 Delegate Storm.

2 DELEGATE STORM: I have an inquiry.

3 THE CHAIRMAN: Is there any delegate who desires
4 to speak in favor first?

5 Delegate Hardwicke.

6 DELEGATE HARDWICKE: Mr. Chairman, I desire to
7 speak in favor of the amendment.

8 THE CHAIRMAN: You may proceed.

9 DELEGATE HARDWICKE: It seems to me when we
10 voted a moment ago to cause these commissioners to be
11 appointed by the court that implicit in our decision was
12 the fact that we were going to get better people in this
13 job.

14 If we are going to get better people in the
15 job, then the amendment is in order because people who
16 are saying these commissioners have been poor in the past
17 or magistrates have been poor in the past are not sneak-
18 ing to the new concept of the commissioner, who will be
19 court-appointed.

20 Furthermore, the powers will be according to the
21 amendment as prescribed by rule. In other words, one

1 individual judge is not going to be able to extend this
2 power. It will be done by rules of court. Consequently,
3 it seems to me that gives ample protection.

4 One further point. We are trying to write a
5 timeless Constitution. The limitations of warrants for
6 arrest, collateral, incarceration, these concepts will
7 keep our Constitution from being timeless and we will have
8 to amend the Constitution with this kind of language in
9 it from time to time.

10 So I urge you ladies and gentlemen, if we are
11 creating an improvement here, then why not permit the
12 persons who will occupy this office to perform fully as
13 the times will demand over the coming generations?

14 THE CHAIRMAN: The Chair recognizes Delegate
15 Storm to pose a question to Delegate Mudd if he will
16 yield.

17 DELEGATE MUDD: I yield, Mr. Chairman.

18 THE CHAIRMAN: Delegate Storm.

19 DELEGATE STORM: Chairman Mudd, who may prescribe
20 by rule if this amendment is adopted?

21 THE CHAIRMAN: Delegate Mudd.

1 DELEGATE MUDD: The Court of Appeals.

2 THE CHAIRMAN: Delegate Storm.

3 DELEGATE STORM: Am I correct then in assuming
4 only the Court of Appeals may prescribe this by rule?

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: Yes, consistent with Section
7 5.31 of our recommendations.

8 THE CHAIRMAN: Any other delegate desire to speak
9 in favor of the amendment?

10 Delegate Weidmeyer.

11 DELEGATE WEIDEMEYER: I want to speak against
12 the amendment.

13 THE CHAIRMAN: Just a second.

14 Any other delegate desire to speak in favor?

15 Delegate Gilchrist.

16 DELEGATE GILCHRIST: Mr. Chairman, it would seem
17 to me that the least we can do this afternoon is be con-
18 sistent. We have consistently said that the authority
19 ought to be given to the Court of Appeals to do this, to
20 do that, on the highest levels of justice. Now, when we
21 get to the lowest level of justice, as it appears from

1 this article, we have decided we have to restrict the
2 Court of Appeals and not grant them the power to do at
3 the low level that which we freely gave them at the high
4 level.

5 I suggest under circumstances like these not only
6 is the quality of mercy somewhat strained, but the quality
7 of justice will also be strained.

8 THE CHAIRMAN: Delegate Weidemeyer.

9 DELEGATE WEIDEMEYER: Mr. President, I have had
10 to oppose my good friend the chairman so many times today,
11 this time I stand with him.

12 The only argument I have heard for this amend-
13 ment is flexibility. I have heard that time and time
14 again. Back in 1924, some of you are too young to remem-
15 ber that, but I do remember it, they had the big hurricane
16 in Florida. A lot of those houses were blown off the
17 foundations because they were flexible, they did not peg
18 them down.

19 If you are going to have commissioners and you
20 have ideas of what their duties are, I say peg those
21 duties down, do not leave it up in the air, get rid of

1 this flexibility. If we are going to have a four-tier
2 system of courts, which seems to be the objective, let's
3 have a four-tier system but do not put it in so flexibly
4 you wind up with a five-tier system.

5 I would say, Mr. President and members of the
6 Convention, we should give this amendment a rousing re-
7 jection.

8 THE CHAIRMAN: Any other delegate desire to speak
9 in favor of the amendment?

10 DELEGATE GRANT: I will make my remarks very brief.
11 The lower courts last year or the year ending July 1966
12 handled 900,000 cases. The Circuit Courts handled approxi-
13 mately 64,000 cases. If you want to do a little arith-
14 metic, there are approximately 70 judges at the Circuit
15 Court level, about a thousand cases apiece. Unless you
16 contemplate installation of 900 new judges, District Court
17 judges at \$30,000 a year, which comes out to a total of
18 \$27 million, you had better give the lower courts some
19 flexibility, you had better allow them to allow their
20 commissioners to do something.

21 THE CHAIRMAN: Delegate Stern.

1 DELEGATE STERN: I see this amendment which could
2 possibly make a five-tier court and by rule have the
3 commissioners ruling and trying cases which the District
4 Court could not. Jurisdiction has been established by
5 law for the District Court and for Superior Court. But
6 by ruling, anything could happen to the commissioners and
7 by rule then these commissioners could have jurisdiction
8 over matters which the jurisdiction could not have and
9 in fact anything that the court so desired they could rule
10 on anything the Federal Constitution would not prohibit.

11 THE CHAIRMAN: Any other delegate desire to
12 speak in favor of the amendment?

13 Any delegate desire to speak in opposition?

14 Ready for the question?

15 Delegate Anderson.

16 DELEGATE ANDERSON: I just want to express my op-
17 position to this amendment. I have been listening here
18 for some time about the authority these commissioners
19 would have. To start with, they are not going to be law-
20 yers and if a search warrant, for instance, becomes neces-
21 sary I think it would be the duty of the lower court to

1 get out of bed and issue the warrant if it was that im-
2 portant.

3 But imagine a layman issuing a search warrant
4 to search somebody's house in the middle of the night.
5 It would have to be at night, would not have to necessarily
6 be at night, but ordinarily the court would be available
7 to issue the warrant itself.

8 I think it would be horrible to have people un-
9 trained in law, not a lawyer, issuing a search warrant
10 to search your property or mine with or without cause as
11 he may determine, it is a complicated procedure. I was
12 State's Attorney for a long period of time, and I know
13 what that requires. Unfortunately, some of the upper
14 echelons of the Judiciary are not too familiar with it.

15 I think it would be an infringement on the
16 personal security of your homes to permit by rule-
17 making power, not by law, authorize somebody to issue such
18 a thing as that.

19 There is no comparison between that and a war-
20 rant. A warrant is something somebody gets on sworn
21 testimony. Immediately he knows what he is swearing to.

1 but a search warrant is to go looking for a crime maybe
2 in the middle of the night on a warrant issued by someone
3 untrained in law.

4 I would urge everyone strongly to vote against
5 this amendment. It might be all right up in Allegany
6 County, but it certainly would not be a safe proposition
7 in Anne Arundel.

8 (Laughter.)

9 THE CHAIRMAN: Ready for the question?

10 The clerk will ring the quorum bell for the
11 last time this evening. The question arises on the adop-
12 tion of Amendment No. 14. A vote Aye is a vote in favor
13 of the amendment. A vote No is a vote against. Cast
14 your votes.

15 Has every delegate voted? Does any delegate
16 desire to change his vote? The clerk will record the
17 vote.

18 There being 28 votes in the affirmative and
19 86 in the negative, the motion is lost, the amendment is
20 rejected.

21 The Chair would like to acknowledge the presence

1 in the gallery of the Honorable Emory H. Niles, long-
2 time member of the Judiciary of the State of Maryland,
3 formerly Chief Judge of the Supreme Bench of Baltimore
4 City.

5 (Applause.)

6 There are a number of other amendments to
7 Section 5.11. The Chair would be disposed to recognize
8 Delegate Powers so the committee could rise. For what
9 purpose does Delegate Schloeder rise?

10 DELEGATE SCHLOEDER: A point of personal privi-
11 lege, Mr. Chairman. I would just like to extend an
12 invitation to former Judge Niles to attend tomorrow's pro-
13 ceedings. I think he may find them interesting.

14 (Laughter.)

15 THE CHAIRMAN: The Chair recognizes Delegate
16 Powers.

17 DELEGATE POWERS: Mr. Chairman, I move the Com-
18 mittee of the Whole rise and report that it has not yet
19 concluded its consideration of Committee Recommendation
20 No. JB-1.

21 THE CHAIRMAN: Second?

1 (Whereupon, the motion was seconded.)

2 All in favor signify by saying Aye, contrary
3 No. The Ayes have it, it is so ordered.

4 (The mace was replaced by the Sergeant at Arms.)

5 (Whereupon, at 6:05 p.m., the Committee of the
6 Whole rose, and the Convention reconvened.)

7 THE PRESIDENT: The Convention will please come
8 to order.

9 On behalf of the Committee of the Whole, the
10 Chair reports that the Committee of the Whole has had
11 under consideration Committee Recommendation JB-1. It
12 has not concluded its consideration and desires to sit
13 again.

14 May I have your attention for just a few announce-
15 ments.

16 I am very sorry to tell you that Delegate
17 Cleveland is absent. He is ill. I am not certain of this
18 but I understand he has had further difficulty with his
19 back. I do not know how serious it is. I hope he is
20 back very soon.

21

1 Any delegates present now who were not present
2 at roll call who desire to indicate their presence?
3 Please do so on the electronic board. Any announcements
4 by committee chairmen? Delegate Gallagher?

5 DELEGATE GALLAGHER: Mr. President, the Committee
6 on the Legislative Branch will meet tonight at 8 o'clock
7 to continue throughout the evening and early hours of the
8 morning, if necessary, to complete the committee report.

9 THE PRESIDENT: Any other delegate? Delegate
10 Morgan.

11 DELEGATE MORGAN: Mr. President, the Committee
12 on the Executive Branch will meet immediately following
13 this session.

14 THE PRESIDENT: Delegate Sherbow.

15 DELEGATE SHERBOW: The Committee on State Finance
16 and Taxation will meet at 9:30 tomorrow morning for the
17 nonconstitutional purpose of having its picture taken.

18 THE PRESIDENT: Delegate Penniman.

19 DELEGATE PENNIMAN: Mr. Chairman, the Committee
20 on Style will meet tomorrow morning at 8:30.

21 THE PRESIDENT: Delegate Scanlan.

1 DELEGATE SCANLAN: There will be a very brief
2 meeting of the Rules Committee following the luncheon
3 recess tomorrow.

4 THE PRESIDENT: Further announcements by
5 committee chairmen? The Chair has one further request
6 or suggestion. Some of the committees may be relaxing
7 in the belief that their work, committee work, at least is
8 concluded. Far be it from me to suggest otherwise, but I
9 point out to you that the Committee on Style cannot
10 possibly do all the work in reviewing the recommendations.
11 Will you therefore, please, each committee member undertake
12 a review of the action of the Committee of the Whole on
13 the recommendation of the committee, the committee on the
14 particular branch, so that before and not when, but before
15 the Committee Recommendation and the report of the Committee
16 on Style is considered by the Convention, we will be
17 certain to pick up any awkward phraseology or errors of
18 any kind.

19 I refer particularly to reports such as that
20 of the Committee on Local Government which is an entire
21 article and which should be reviewed very carefully.

1 Please do not leave this entirely to the Committee on
2 Style.

3 One other matter that will take but a moment
4 and will save time tomorrow. I wish to read across the
5 desk report of the Committee of the Whole No. 6. The
6 Clerk will read the report.

7 MR. QUILLEN: The report of the Committee of
8 the Whole No. 6. This report covers matters in general
9 order No. 5. A report on Committee Recommendations GP-3,
10 Natural Resources.

11 THE PRESIDENT: This report will be circulated
12 to you. It will not have attached to it the committee
13 recommendation because the committee recommendation was
14 not amended. Therefore, the report concerns the recommen-
15 dation in the original form.

16 Are there any other announcements? The Chair
17 recognizes Delegate Powers.

18 DELEGATE POWERS: Mr. President, I move we
19 adjourn until 10 o'clock tomorrow morning.

20 (The motion was duly seconded.)

21 THE PRESIDENT: All in favor, signify by saying

1 Aye; contrary, no. The Ayes have it, so ordered.

2 (The Convention adjourned at 6:09 p.m. to
3 reconvene Friday, November 17, 1967 at 10 a.m.)
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